ELECTRICITY COMPETITION—Volume 2

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

MAY 13, 1999—THE ROLE OF FEDERAL ELECTRIC UTILITIES
MAY 20, 1999—PURPA, STRANDED COSTS AND THE ENVIRONMENT
MAY 26, 1999—CONSUMER PROTECTION ISSUES
JULY 1, 1999—STATE AND LOCAL ISSUES

Serial No. 106–64

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
57–440CC WASHINGTON : 1999

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THE ROLE OF FEDERAL ELECTRIC UTILITIES

THURSDAY, MAY 13, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON ENERGY AND POWER,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. Joe Barton (chairman) presiding.

Members present: Representatives Barton, Stearns, Largent, Burr, Whitfield, Norwood, Rogan, Shimkus, Shadegg, Pickering, Fossella, Bryant, Bliley (ex officio), Hall, McCarthy, Sawyer, Markey, Rush, Wynn, and Dingell (ex officio).

Also present: Representative Jenkins.

Staff present: Joe Kelliher, majority counsel; Ramsen Betfarhad, majority counsel; Jeff Krilla, majority counsel; Curry Hagerty, majority counsel; Cathy Van Way, majority counsel; Donn Salvosa, legislative clerk; Sue Sheridan, minority counsel, and Rick Kessler, minority professional staff member.

Mr. BARTON. The Subcommittee on Energy and Power of the Commerce Committee hearing on the "Electric Competition: Role of Federal Electric Utilities" will come to order.

Today the subcommittee continues its hearing on electric competition, with the focus on the role of Federal electric utilities in the competitive electric market. This hearing, like the others before it, focuses on core Federal issues; issues that States have little or no authority to address; issues that can only be addressed by the Congress. It is clear that the role of the Federal electric utilities in a competitive electric market can only be addressed by Federal legislation since the States have no regulatory authority over Federal agencies like the Tennessee Valley Authority and Bonneville.

One of the biggest questions at this hearing, like the others before it, is whether the current situation is acceptable. The testimony of the witnesses indicates that the status quo with respect to Federal electric utilities is not acceptable. Under the status quo, Federal law prevents any kind of competition in the Tennessee Valley. TVA's wholesale customers have to buy from TVA. Under the status quo, the taxpayers may have to bail out TVA and Bonneville in the event that they cannot pay their debts. Under the status quo, the transmission systems of the Federal electric utilities are subject to a different set of rules than those that govern the rest of the transmission system, and the Federal electric utilities can discriminate against their rivals.

Fortunately, there is strong support in the Tennessee Valley and the Pacific Northwest for Federal electric legislation that reforms the current role of TVA and Bonneville in competitive electric markets. Those regions, and their congressional delegations, have addressed many difficult issues. I want to commend them for the progress that they have made. I support what they have done. I hope that today's hearing will allow additional progress to be made. I believe that is possible.

Let me suggest a few things that we should keep in mind as we go through the hearing today. I don't think the Congress will approve legislation that allows TVA and the Pacific Northwest to continue to enjoy preferential access to low-cost Federal power systems if those regions do not assume responsibility for TVA and Bonneville's debts. I also think Congress will want to assure the future operation of the Federal electric utilities do not pose risks to the taxpayers. I think that Federal electric utilities will have to be subject to additional FERC regulation, especially of their transmission systems, to ensure that they do not have an unfair competitive advantage over their competitors.

The testimony of the witnesses is similar to the testimony of the witnesses at prior hearings on one important point: the call for Congress to pass electricity reform legislation. TVA's customers are calling for Federal legislation to eliminate the barriers in Federal law to wholesale competition. Bonneville's customers are also calling for Federal legislation to reform Bonneville's role in the market.

I intend to work closely with congressional delegations from these affected regions, members of the subcommittee, and members of the full committee, to develop comprehensive legislation that addresses regional concerns and also protects the National interest. I look forward to the hearing today, and to hearing the testimony of the witnesses that we have before us.

With that, I would like to recognize the distinguished chairman of the full committee, Mr. Bliley, for an opening statement.

Chairman BLILEY. Thank you, Mr. Chairman. I want to commend you for holding this timely hearing on the role of Federal electric utilities in a competitive electricity power market. This is an important issue, not only because Federal electric power has a direct impact on many States, but more significantly, because of its impact on the national power market.

The Federal Government assumed its role as an electricity generator and marketer over 60 years ago. Federal projects were intended to control floods, promote river transportation, supply water for farms and rural communities, and ultimately, and foster employment and economic growth in regions of the country that were economically less vibrant. Federal power helped advance important goals. I think in many areas victory has been declared.

Today, the original rationale for having the Federal Government in the electric power business is far less compelling than it was 60 years ago. You have heard me say I don't believe the Federal Government should be in the power business, but it is. So accepting that, we must figure out how to integrate the Federal utilities into a competitive market, with minimum distortion to national electric markets.

For example, some 50,000 circuit-miles of the Nation's transmission capacity is controlled by Federal electric utilities and is outside the open access mandates of the Energy Policy Act and FERC's Order 888. I believe we need to explore uniform regulation of all transmission lines, regardless of ownership. As I have stated before, benefits of competition in the electricity markets must flow to consumers and businesses alike. That includes homes and businesses in the Tennessee Valley and the Pacific Northwest.

I believe that the electricity power market must be national, open, robust, and competitive. That means all consumers, no matter their size, where they are located, or who they are presently served by, must be able to choose their power supplier.

Again, Mr. Chairman, I commend you for holding this hearing. I applaud the member working group you and Mr. Pickering and others are leading. I want to move out smartly on putting together a comprehensive package—and I mean comprehensive. I look forward to hearing the testimony of the witnesses. I thank you for yielding me this time.

Mr. BARTON. Thank you, Mr. Chairman. We now recognize the distinguished ranking member of the full committee, Mr. Dingell, for an opening statement.

Mr. DINGELL. Mr. Chairman, I thank you. I commend you for holding these hearings. I would note that a couple of matters in the last couple of days have distressed me. One of which is the possibility that we will have a difficulty getting the required number of witnesses to explore properly all aspects of the different bills before the committee. That would include, of course, concerns about what the administration proposes to do; the impact of this legislation, if it moves forward, on the environment, on industry, on reliability, on investors, shareholders, and bond holders. I hope that the Chair will be very careful to see to it that we have full and thorough inquiries into these matters, and witnesses that might be needed to accomplish full and careful hearings. That would include, of course, questions of impact of this legislation on places like the TVA areas and the Bonneville areas, where the major utilities and distributors and generators of power function under different exemptions from regulations, the anti-trust laws; and have a number of special preferences, including extensive subsidies.

I think we need to know how they will be affected, and how deregulation, which would permit them to function outside of their service areas, would affect other utilities. I hope the Chair will give very careful attention to the need to hear from all of the witnesses, including some that the minority will be suggesting to the leadership of this committee in the hope of being helpful.

I would also add that I am somewhat troubled about the fact that the staff of the minority was excluded from certain meetings which were held here to discuss these matters. That was done under the invitation to the meeting. I found this to be intensely distressing, personally. I did not get evidence of the kind of cooperation that I keep hearing the majority wishes to afford the minority, and wishes minority to afford in return. I would hope that perhaps the Chair, in his wisdom, would address this question. As I have observed, it has been very distressing to me. Probably that

distress would reflect itself in these proceedings in a fashion which might inhibit the orderly processing of this business.

Now, Mr. Chairman, I am pleased to note that you are considering the TVA and the Bonneville Power Administration. They achieve unique advantages for themselves and for the areas that they serve. We will want to necessarily know whether they should continue to achieve these advantages, and how they will impact the other parts of the country and other areas that are served. I would note that times have changed since the days when retail electric markets were served by a single supplier generating most, if not all, of its own power.

In that era, Federal power marketers, like other monopolies, were assigned to serve a specific region. They provided fine service. Consumers outside these special areas could only envy the low prices that TVA and Bonneville offered, and the industries whose low prices attracted them to that region. This was, of course, through generous financial backing of the Federal Government.

Today, these giant generators face a more complex world. Bonneville is trying to work off billions of dollars in nuclear-related stranded costs. It may be responsible for years of significant new costs for fish and wildlife conservation measures, which should be a matter into which this committee will inquire carefully. Because the preservation of the fishery resources of the Northwest are not a local concern, but are a national concern. They involve the possible extinction of whole strains of existing wild salmon stocks, a great calamity for the Nation and for the area. I hope that this will be a matter of great concern to this committee.

Again this presents an interesting development and an interesting dilemma. Muni's, rural co-ops, private utilities and industrial customers in these areas all express interest in the benefits of retaining competition, so long as they can retain an option to purchase this Federal power; i.e., a first call, or a first right of refusal, while at the same time being able to sell outside of their service area. Who can blame them? They have anti-trust exemptions. They have special exemptions from regulations. They have a very fine situation where they get an extensive and generous Federal subsidy. I confess that my constituents, like anybody else of logic and good sense, would like to see a similar right to favorable, and indeed, special treatment. After all, we all only want just a fair advantage in this world.

The question for this subcommittee to consider then is what will be the role of TVA, Bonneville, and other Federal agencies? What role will they play in a more competitive electricity market? How will they affect the services of other electricity suppliers? How will they continue to function? Will they continue to have subsidies while they sell outside of their regions? That is an interesting question. Should regional customers have the best of both worlds: a monopoly with respect to purchasing Federal power, and all the potential benefits of competition without the risks? Is this progress, or is it simply a retooled version of traditional, regional preference that benefits just a few, courtesy of the financial backing of many?

I want to commend you, also, Mr. Chairman, for your willingness to hold a hearing on the administration bill. This, as I have noted, is a fine bill. It is marketed to us as a deregulation bill. But as I

look at it, it contains many fine examples of new environmental regulation, subsidies and things of that kind, into which the committee should inquire with extraordinary care.

Indeed, in any event, these will be interesting hearings. I look forward to a thorough and careful explanation of the matters in question here today. Thank you, Mr. Chairman.

Mr. BARTON. Thank you, Congressman. Before the ranking member, Mr. Hall, proceeds, I did not hear exactly what you said about some of the process concerns on the working group that we have established. So I will have to read your statement.

Mr. DINGELL. I will make a copy of the letter that was sent out on the invitation, which invited members, but which I interpreted and our staff interpreted as excluding them from the working group. I would think this starts group's efforts out under a very dark star. I would hope that the Chair would be interested enough in that to see that that did not occur.

Mr. BARTON. Well, it would certainly be counterproductive to establish a working group with the intent to exclude anyone. So I am going to reserve the right, until I read this letter. I assure the gentleman from Michigan that I am trying to be inclusive, not exclusive. If we want to include anyone at all, it is the distinguished gentleman from Virginia, Mr. Bliley, and the distinguished gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Thank you. I knew the Chair, when this complaint was raised, would be as concerned as I was about the exclusionary practices that I saw in this unfortunate letter.

Mr. BARTON. I am always concerned when anybody of my subcommittee or full committee is concerned. We now recognize Mr. Hall for an opening statement.

Mr. HALL. Mr. Chairman, I agree. We ought to let Bliley and Dingell in on anything that is going on.

The title of today's hearing, "The Role of the Federal Utilities," can raise a real question of whether or not there should be a role. I don't believe that is the intent implied in the title, but I want to make it clear that I believe there is a role.

The question that is really before us is how Federal utilities conduct their business. How will their business practices need to change as States throughout the country embark on restructuring investment-owned utilities? My State is underway on it right now. In a word, the question is not the business role, but, I think, the business behavior.

The Tennessee Valley Authority, Bonneville Power Administration and the other PMAs, including the Southwest Power Administration which is in my district, have a long and storied history providing dependable, low-cost power to their service areas. They literally electrified the countryside in the 1930's and 1940's. They brought economic development and a new and better way of life to hundreds of thousands of people. They were established as regional entities and have been devoted to remaining regional entities throughout their existence.

That was all good and well under the pluralistic electric system where investor-owned electric utilities, public power systems and rural electric cooperatives operated in discrete service areas. However, the drive to bring competition to this industry is putting new

pressures on the Government utilities who have operated under substantiality different rules, and largely without regulation.

There is going to be some changes. Competition and the goal of the establishment of a nationwide electric market are causing us to rethink how the Federal utilities behave, and how they can be restructured to become strong but fair players in the electric industry of the future. Should they remain regional entities? Should the benefits of their low-cost power be made more available to those elsewhere? There is a delicate balance on a number of issues like this—one that needs to be struck as we consider whether to take up Federal electric utility restructure legislation. If so, how?

Let me mention just one example where striking this balance is made difficult. Kaiser Aluminum operates an aluminum extrusion plant in Sherman, Texas, in my district. Their source of aluminum is Kaiser's aluminum smelter in the Northwest, served by BPA as one of its direct-service industries. Loss of that smelter as a result of high electric rates would most certainly put the Sherman plant in jeopardy.

So as we begin to deal with making changes in the Federal electric utilities, we need to recognize that these are difficult questions. As a committee, we need to be fully informed before we make our decisions. Snap judgments, based on fragmentary information or hearsay is the worst way to legislate. Mr. Chairman, it is not the way I have ever seen you operate, and I don't expect to see that now.

I thank you for the time that you have given me and for the cooperation that you have extended to us. I would ask unanimous consent that members be allowed to submit questions to these witnesses, because I am going to have to be going and coming. We have other committee meetings today. I would ask you to leave the record open for their answer. I yield back my time.

Mr. BARTON. Without objection. The gentleman from Georgia, Mr. Norwood, is recognized for an opening statement.

Mr. NORWOOD. Thank you, Mr. Chairman. Thank you very much for holding these hearings today on perhaps what is one of the most complex issues surrounding the whole electricity restructuring debate. That is: How do we create the ideal goal of a level playing field for all electricity suppliers, as we seek to give better service and lower rates to their customers? Hopefully, this hearing today will shed some light on that, Mr. Chairman. It has sort of been my experience in Washington that everybody wants a level playing field. They just wanted it tilted in their direction.

As we all know, electricity in the United States is generated, transmitted, and distributed by a variety of suppliers who are subject to differing levels of Federal and State regulation, with a variety of taxation schemes and dissimilar legal and corporate structures. Now that we know this, it is conceivable to me that the further we probe into this issue, we may discover that a Federal role in providing choice in electricity to customers may very well be a steep mountain to climb.

In my part of the country, the battle between public and private power is almost as old as the battle of boll weevils. I am less interested in seeing one side—or the other—win, than I am in seeing both sides survive. Therefore, I will be looking to our panelists, our

experts, on this issue—and everybody at home knows what experts means up here—to shed some insight on how the Federal Government can pass a deregulation program that, at least, from the start will not put any of the suppliers at a competitive disadvantage.

Again, Mr. Chairman, I really look forward to hearing the panelists in this hearing. I thank you for having it.

Mr. BARTON. I thank the gentleman from Georgia. I would now to recognize the gentleman from Ohio, and before I do, make a joint announcement with Congressman Hall.

We have established a working group to begin to address some of these issues in more detail. It meets every Tuesday, at 4:30 p.m. We had our first meeting this week. We had the Secretary of Energy, Mr. Richardson. We had 12 members present, 6 Republicans and 6 Democrats. Congressman Chip Pickering is one of the co-chairs. The other co-chair is the gentleman from Ohio, Mr. Sawyer, whom Congressman Hall and I have asked to co-chair with Mr. Pickering.

For those groups that are in attendance today, if you would wish to appear before the working group, we encourage you to get with Mr. Pickering's staff or Mr. Sawyer's staff. We are going to be running a parallel process with our formal hearing process.

We are glad to welcome the gentleman to that co-chairmanship and recognize him now for an opening statement.

Mr. SAWYER. Thank you, Mr. Chairman. Thank you for these hearings, and for the work that you are doing to try to build a consensus document.

I have to tell you that I have not had the opportunity, yet, to consult with my ranking member on the full committee. As you probably detected this morning, it would probably be a good idea. I have spoken with his staff, but I have not spoken with him yet.

Mr. BARTON. I was told that you had accepted the illustrious position I have just publicly announced that you have been appointed to. I should have consulted with you before I made that announcement. We hope you will.

Mr. SAWYER. I will get back to you shortly, Mr. Chairman.

Mr. BARTON. Okay. Film at 10, as they say.

Mr. SAWYER. Let me just associate myself with the remarks of virtually everybody who has spoken to this point. The Federal utilities do have a unique role in this broader system. In the end, by the time we are done we are not really talking about one side or another, but rather an integrated system, whole, if we work well throughout any transition that occurs.

I am grateful to see so many of our colleagues here to comment on the importance of this particular hearing to their regions of the country, and to the Nation as a whole. As you know, I have focused a good deal of my interest on transmission, in the belief that we need a flexible Federal framework to attract the needed capital so the grid can grow and thrive in a new environment. The Federal utilities will play in important part in that equation. Their operation of the transmission, and their components in the transmission grid can have a profound effect on the way in which electricity is moved and marketed around the country.

I will be particularly interested today to hear from our witnesses in whether they believe that FERC should have jurisdiction over

major transmission providers, whatever their genesis within the system. What happens if FERC were not to have that authority? I would also be interested in their views on how Federal utilities would be affected by FERC's decision on whether to require affiliation with an RTO. I know, as I am sure you do, Mr. Chairman, that FERC is about to release its notice of proposed rulemaking on this matter today. Final result of that effort could have a serious effect on the Federal utilities and their control of the grid.

Other issues concern preferential access to power and emission standards. These, too, could have far-reaching effects because of the wide net the Federal utilities cast over the system.

In conclusion, let me just say, again, thank you for the breadth of hearings; for the diversity of the points of view that we have heard, and for the work that lies ahead.

Mr. BARTON. The gentleman from Ohio would recognize the Vice Chairman, Mr. Stearns, of Florida, for an opening statement.

Mr. STEARNS. Good morning. Thank you, Mr. Chairman. Let me welcome our guests and our colleagues who are patiently sitting here as we offer our opening statements.

In this hearing we will examine the issues that are related the role Federal utilities. Mr. Chairman, I think it is very important to have this hearing. As most of you know, there are nine Federal utilities which are part of the several agencies in the Federal Government; which include several agencies of the Federal Government. Four agencies operate electric generation facilities. A fifth power marketing administration, the Alaska Power Administration, was sold under a 1995 Federal legislation act.

Now, I think for many of us the Tennessee Valley Authority, the TVA, is the largest Federal electric utility. Many of us are concerned how we should operate, and what we should do in that respect. It is authorized to issue bonds to pay for its costs. It cannot issue stock, so it has to go to the bond market for it. It has a current debt level, I believe, of almost $26 billion. It can go all the way up to $30 billion. It has gone as high as $28 billion.

Because of the provisions in the TVA Act and other laws, TVA's wholesale customers must purchase from TVA. TVA has not been exposed to competition from other electric suppliers. TVA is not subject to FERC or State public utilities commission oversight. A recent study by the Putnam-Hayes-Bartlett study group indicated that for Florida taxpayers are helping to subsidize the TVA, annually at the amount of $1.2 billion. So I think I am interested to hear how our panelists hope to protect the taxpayers, while ensuring full cost recovery by the Federal electric utilities.

The Bonneville Power Administration serves the Pacific Northwest. It operates one of the largest transmission systems in the country. FERC has limited authority over its rates under the Northwest Power Act. Unlike TVA, Bonneville has been exposed to strong wholesale competition. The four Governors in that region have recommended certain changes. So I think it is altogether important that we discuss what should be done for these utility companies, like the TVA and Bonneville. I appreciate the opportunity to hear our witnesses. Thank you, Mr. Chairman.

Mr. BARTON. Thank you, Congressman Stearns. We recognize the gentleman from Tennessee, Mr. Bryant, for an opening statement.

Mr. BRYANT. Thank you, Mr. Chairman, and good morning. I am glad that we are having this hearing on the role of Federal electric utilities and electricity competition. I thank all of the witnesses for being here today. I want to extend a special welcome to Mark Medford, Herman Morris and James Baker, from Tennessee, as well as my two colleagues from Tennessee, Bob Clement and Zack Wamp, who share, as we all do in the Tennessee delegation, the desire that our State continue to have reliable, relatively inexpensive power.

The Tennessee Valley Authority has played a crucial role in the history and economic development of the State of Tennessee. Since 1933, TVA has brought us electricity, jobs and economic development, flood control, navigation, and recreation. TVA is truly the only entity of its kind. It has meant a lot to the people of Tennessee and the Tennessee Valley.

We are here to discuss the future of the Tennessee Valley Authority, as well as the other Federal electric utilities. I am glad that TVA and the TVPPA have come to an understanding on some of the important issues. I hope that continuing talks will lead to more agreement within our region. Memphis and Knoxville would like the ability to go outside the fence of TVA, and we need to balance their need for competition against the needs of other Tennessee utilities.

I am particularly concerned for the rural areas of Tennessee, like much of my district. Rural customers should not be left behind in the race to restructure. Tennessee is in a unique position among the States, because it is the only State in the country where electric restructuring cannot occur without Federal action. Tennessee's electric industry is wholly under the Tennessee Valley Authority.

While I support fair treatment for TVA, I do not believe that it is my role to merely be a defender of the TVA. I believe that it is my role to be the defender of the citizens of Tennessee, and in particular, the Seventh District, which I represent. Whatever the future holds for the electric industry, I want ensure that all of the people of Tennessee continue to have low-cost, reliable power for decades, as they have had through TVA.

At the end of the day, though, we need to balance all of the interests concerned. I look forward to working with all of the parties to maintain the low costs and reliability of electricity in Tennessee. I yield back.

Mr. BARTON. We thank the gentleman from Tennessee. We would recognize the gentleman from Oklahoma, Mr. Largent, for an opening statement.

Mr. LARGENT. Mr. Chairman, I would just say thanks for holding this hearing and continuing to move the ball down the court on electricity restructuring. I want to tell you that, frankly, I am a little dismayed with the ranking member's comments about the working group.

As you know, this is an effort that Chip and I have been working on to actually allow members to elbow their way to the table; to be a part of the process—certainly not thinking that we were excluding anybody. I hope that those comments will relieve any anxiety that anybody might have that they are being excluded.

Mr. BARTON. Well, I am sure that we will be able to work that out. That is another step in the road toward electricity deregulation. We will make it. I am very confident of that. Do you have any other additional opening statement?

[Mr. Largent shakes head indicating no.]

Mr. BARTON. We would recognize the gentleman from Illinois, Mr. Shimkus, if he wishes to make an opening statement.

Mr. SHIMKUS. Just to thank you for holding this hearing. I am interested in hearing my colleagues. So I yield back.

Mr. BARTON. The distinguished gentleman from the great State of Kentucky, Mr. Whitfield, for an opening statement.

Mr. WHITFIELD. Mr. Chairman, like the other members of this committee, I am also quite excited about these hearings and look forward to the testimony of colleagues today. I would just mention that Kentucky has an average price of 4.03 cents per kilowatt/hour on electricity. So our rates are very low. Those of us from Kentucky want to proceed in a cautious manner on this subject. I look forward to our witnesses today, particularly those from TVA. I yield back the balance of my time.

Mr. BARTON. I thank the gentleman. The gentleman from the great State of Arizona, Mr. Shadegg, for an opening statement.

Mr. SHADEGG Thank you, Mr. Chairman. I, too, want to complement you on holding this, the fourth hearing in our series on electricity restructuring, addressing the role of Federal electrical utilities. I believe this is a critically important issue as we move forward in restructuring the utility industry in America and deregulating the sale of electrical power.

Congress created these entities. It is, I think, Congress which must address how they are to be structured and what role they are to play as we move forward from this point. The Federal electrical utilities control thousands of miles of transmission wires and tens of thousands of kilowatts of electrical generating capacity. Their exclusion from competition, I think, would distort the marketplace and would not be in the interest of American consumers.

In the 104th Congress, I introduced legislation which would have privatized the power marketing associations, excluding TVA and Bonneville. Specifically, this legislation was unique in that it would allow the PMA customers to buy the PMAs and would have recognized their existing ownership interest in those PMAs. I do find it somewhat curious that elsewhere throughout the world, in Europe and in South America, we are moving away from publicly owned generation of electricity to privately owned generation of electricity, but here in the United States, we don't seem to be able to make significant progress in that direction. I think it is vitally important, as we move toward energy deregulation and as technology pushes us toward energy deregulation and competition, that we address the issue of proper role for the existing Federal electric utilities and the PMAs.

I compliment you for holding this hearing. I think it is an issue that we are compelled to address and resolve in the interest of all electricity consumers in the country. I thank the gentleman.

Mr. BARTON. Seeing no other members present, all members not present that are members of the subcommittee will have the req-

uisite number of days to enter their opening statements into the record, at the appropriate point.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. Chairman, I commend you and the Subcommittee for holding this hearing on the role of Federal electric utilities, the Tennessee Valley Authority and the Federal Power Marketing Administrations, on electricity competition. I hope that the Subcommittee and the full Commerce Committee will carefully explore the role of Federal utilities in the emerging electricity marketplace as we advance legislation to increase competition in that vital industry.

Throughout the Southeast, people are very much aware of the importance of the TVA to our economy. Although it is not as widely known, the actions of other Federal utilities, especially the Bonneville Power Administration, can also have economic impact in our region. Many of the jobs in my state of Louisiana, as well as many of the jobs in Texas and other states represented by Subcommittee members can be adversely effected by the possible actions of one of the PMAs, the Bonneville Power Administration, to discontinue serving its industrial customers, and particularly the aluminum industry, after the year 2000.

I am very concerned that workers in my district will be hurt if the Bonneville Power Administration decides that it will no longer provide electric service to its traditional aluminum customers on a basis comparable to the cost of service provided to other BPA customers. Approximately forty percent (40%) of America's primary aluminum producing capacity is located in the Northwest. The industry is dependent upon the hydropower based electricity supplied by BPA. Electricity is the largest single cost of producing aluminum, representing almost a third of total costs of production.

In the State of Louisiana, as well as in the State of Texas—so ably represented by the Chairman and Ranking Minority Member of this subcommittee, large alumina refineries produce the raw materials used by the primary aluminum industry in the U.S. These plants, including Kaiser's Gramercy alumina refinery in my district, provide hundreds of highly skilled, high paying jobs and contribute hundreds of millions of dollars to the local economies. Although the Southeastern alumina plants do not send all their alumina directly to the primary plants in the Northwest, they are dependent upon a healthy U.S. primary aluminum industry overall for their economic viability. Loss of the forty percent of the U.S. primary production located in the BPA service area would have a severe impact on demand for alumina in the United States, reducing the market for the products of the Southeastern alumina plants and threatening the jobs in Louisiana and Texas.

Mr. Chairman, the importance of BPA continuing to supply electricity at competitive rates to its aluminum customers is recognized by both the management and union workers of the aluminum companies in the Southeast as well as the Northwest. Most of the workers in the aluminum and alumina plants in both regions are represented by the United Steelworkers of America. Last month, Steelworkers' President George Becker led a group of aluminum company and union officials in a meeting with Energy Secretary Richardson to discuss the situation facing the Northwest aluminum industry. The message from that meeting was clear, the decisions made by the Bonneville Power Administration to either continue serving its aluminum and other industrial customers or to arbitrarily cut off those customers from BPA service, will have major economic impacts on the Northwest and the rest of the nation.

Beyond the impacts on primary aluminum plants in the Northwest and the alumina plants in the Southeast, a healthy domestic aluminum industry is essential both for the U.S. national defense and for a healthy civilian economy. In the 1930's and 1940's the Federal Government encouraged the development of the primary aluminum industry in the Northwest to supply metal for military aircraft and ships, to provide a large, dependable load for BPA's power, and promote additional economic development. The Federal Government was so committed to the development of the aluminum industry in the Bonneville service area that four of the first six aluminum plants were built by the Government and later sold to private industry. Today, many companies throughout the U.S. are dependent on aluminum produced in the Northwest to manufacture products as diverse as airplanes, motor vehicles, ships, building materials, and beverage cans. Aluminum's light weight, high strength, and energy efficient recyclability have made many of the most essential

and popular products used by Americans more efficient and environmentally friendly.

The process of transition from regulated to competitive markets in the energy sectors can create special vulnerabilities for energy intensive industries such as the aluminum industry. Unfortunately, we learned a painful lesson in the South during the transition to deregulation of natural gas. Prior to deregulation of the interstate gas system, a large primary aluminum industry existed in the Southeast based upon the availability of electricity generated from low cost gas in the uncontrolled intrastate system. Federal policies during the transition led to large increases in gas prices in the Southeast and the loss of primary aluminum and alumina plants. Among the plants permanently closed during the transition to decontrol of natural gas were two of Kaiser's three large plants in Louisiana, a primary aluminum plant at Chalmette and an alumina refinery at Baton Rouge. Those two plant closures resulted in the loss of approximately 4000 jobs in the aluminum industry in Louisiana. And as Steelworker President Becker informed Secretary Richardson, there is a 4 to 1 rate of indirect job losses for every job lost in the aluminum industry. The loss of primary aluminum plants and the alumina refineries that supply the primary industry has been repeated in other states.

The Federal electric utilities also have had experience with increases in electricity prices threatening the economic viability of the aluminum industry in their service areas. In the 1980's aluminum plants on the both the TVA and BPA systems were either temporarily curtailed or permanently closed when electricity prices rose to levels comparable to those currently projected by BPA for the Northwest aluminum companies if BPA does not continue to serve those plants on terms similar to that provided to BPA's other traditional customers.

In the late 1970's, the Bonneville Power Administration predicted a severe shortage of electricity and considered cutting off power to its direct service industrial customers. In the 1980 Northwest Power Act, Congress required BPA to offer service to the aluminum industry and BPA's other industrial customers through 2000 with continuing authority to provide service to those industrial customers beyond that time. Apparently, the Bonneville Power Administration does not have or project a shortage of power that would require it to cut off its traditional customers after the expiration of their existing contracts in the year 2000. BPA is using its discretionary power to add new customers and increase loads to existing customers within and outside the Northwest region that constitutes its traditional service area. In 1995 BPA sought and received Congressional approval to sell to new customers outside of the Northwest region any "excess" electricity resulting from reduced contract demands by BPA's traditional customers. At that time, BPA informed Congress that the out of region sales would not deprive BPA's traditional customers of power. BPA has also recently proposed expanding its electricity sales to new groups of customers in the Northwest. This expansion of service to new and existing customers is occurring at the same time that BPA is threatening to cut off service or greatly increase the price charged to the traditional industrial customers.

Mr. Chairman, I understand that the subcommittee will be receiving testimony today on the BPA situation from the Department of Energy and from one of the Northwest aluminum companies, the Reynolds Metals Company. Like Kaiser Aluminum, Reynolds operates primary aluminum plants in the BPA service area and an alumina refinery in the Southeast. I hope that the Subcommittee will fully explore the intentions and policies of BPA with regard to the sale of electricity to its direct service industrial customers. This is a matter of considerable impact and importance not only to the states of the Pacific Northwest, but to Louisiana, Texas, and other areas of the country. It is a matter which directly affects many of my constituents and I intend to follow closely BPA's actions as a member of both the Commerce and the Resources Committees.

Thank you.

Mr. BARTON. The Chair is basking in the glow of all these members' complimenting him for holding the hearings. We hope they are just as interested in helping to move legislation when we get to that point.

We are now going to hear from our first panel, which is a distinguished group of Congressmen. Normally, we start the Chair's left and go to the right. I don't think it would be fair since Mr. Hastings, Mr. McDermott and Mr. DeFazio were the last members here. So actually, we are going to go in order of appearance. We are going to start with Mr. Clement, who was the first member

here; then Mr. Franks, who was the second member; then Mr. Wamp, then Mr. McDermott, then Mr. Hastings, and then Mr. DeFazio. So we will recognize members in order of appearance. Unless, Peter, do you have a pending assignment?

Mr. DEFAZIO. We are in the middle of another hearing. I am the only Democrat at the hearing, Mr. Chairman. That is a problem.

Mr. BARTON. Okay. Well, would it help you if you went first?

Mr. DEFAZIO. If it does not offend my colleagues. I would not want to offend my colleagues.

Mr. BARTON. Okay. Well, we will start with you and then we will go to Mr. Clement. So you are recognized. Your statement is in the record in its entirety. We are going to recognize you for 5 minutes.

STATEMENTS OF HON. PETER DEFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON; HON. BOB CLEMENT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE; HON. BOB FRANKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY; HON. ZACH WAMP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE; HON. JIM MCDERMOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON; HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON; AND HON. GEORGE R. NETHERCUTT, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. DEFAZIO. Thank you, Mr. Chairman. I don't know if this is working; the little light doesn't work. I guess this is working. There we go.

Thank you, Mr. Chairman. My statement is in the record. In the interest of time, and given the graciousness of the Chair and my colleagues, I will condense my remarks.

I would just like to address, briefly, a regional concern as it relates to your restructuring debate, and a few brief comments on the restructuring debate, generally. Perhaps Mr. McDermott will echo some of my concerns in his testimony.

In the Northwest, we are tremendously dependent on the Bonneville Power Administration, a Federal power marketing agency. We, in the last Congress, came together as a region. Bob Smith, the former Chairman of Agriculture, and I organized a bipartisan group to develop a Bonneville Power Administration title to any potential restructuring legislation. We are continuing to meet on a bipartisan basis. What we are looking at, in particular, are provisions that would put the Bonneville Power Administration—which is, right now, given a unique forbearance under Federal law and the wholesale restructuring of a few years ago—to bring their transmission under Federal aegis, and take care of some other concerns that have been expressed by their diverse customer groups in your legislation.

I would just like to say that there are, sometimes, misperceptions about the Bonneville Power Administration. We do have low electric rates, because we are primarily dependent upon hydropower through the Bonneville Power Administration. But BPA does not take appropriations from the Federal Treasury. BPA, in fact, pays over $600 million a year on past borrowings from the Federal

Treasury for the dams and the transmission system. The interesting thing is that at the end of amortizing that debt, the assets will belong to the Federal Government. So those who criticize the Northwest and say we are getting a sweet deal, I would like to offer them the same deal on their house mortgage: which is, they pay the house mortgage for 30 years, and then the bank owns the house. So that needs to be taken into account.

Second, we did refinance the debt to take care of the concerns about some of the past borrowings that were very low—the interest rates were low. When Senator Hatfield was Chair of the Appropriations Committee, we restructured the debt; moved it to what was, then, the market rate. We did not take a variable rate, but we moved to the market rate a few years ago; paid a $100 million premium as points to the Federal Treasury in order to restructure the debt to that market, and have met all of our obligations since that time.

Finally, just on the broader issue of restructuring, I have seen recently, people saying that the problems in the wholesale market, evidenced in the Midwest, last year, or in California with price spikes, are the reasons why we should move ahead with retail restructuring. Actually, those are problems that are still the result of the incomplete development of our last restructuring legislation in the wholesale market. The retail restructuring, really, does not relate to those problems, and is unlikely to help resolve those problems. So I would hope that the committee would give some particular scrutiny to resolving the problems of the last deregulation in the wholesale market so we can develop a fully functioning market in the wholesale areas that will avoid these extraordinary price spikes.

Then, finally, I would be remiss in saying—you know, from a low-cost region of the country; having seen reports from a number of think tanks, from the Department of Agriculture and others assessing the differential impact between a number of Midwest, Western, and even some Southeast States, and other States' restructuring, particularly high-impact and rural areas—the fact that a number of other think tank studies point to the fact that it is unlikely that retail competition will bring benefits to the individuals or small businesses in my region and in many other States; but will benefit, disproportionately, the largest businesses and a few providers. I would urge the committee, if it goes forward, to go forward in a way that provides flexibility to the individual States to meet their needs, so they can develop the most efficient markets possible serving their customers.

With that, I thank the chairman for his indulgence—and my colleagues. Thank you, Doc.

[The prepared statement of Hon. Peter DeFazio follows:]

PREPARED STATEMENT OF HON. PETER A. DEFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. Chairman: Thank you for inviting me to testify at your hearing.

About 2½ years ago, Bob Smith and I organized the Northwest Energy Caucus in the House. The Caucus includes every House member from the four Northwestern states—Oregon, Washington, Idaho and Montana. Our goals were to develop legislation that could form the basis for a NW title in a national energy industry restructuring bill—legislation that would retain cost-based rates for federal power in the Northwest, while protecting the interests of the U.S. taxpayer.

Our delegation has been working well together—and we believe we are very close to completing our task.

We have appreciated your committee's forbearance and hope to provide you with a proposal that—at a minimum—will put BPA's transmission system under the same rules that apply to other transmission owners, while providing a mechanism for dealing with any stranded costs that Bonneville might have in the future—as unlikely as that is.

I want to say a few words about the Bonneville Power Administration.

BPA owns nearly half of the region's generation and as much as 80 percent of the Northwest's high voltage transmission. It is an entirely self-financed agency, not supported by congressional appropriations, but rather by sales of electricity and transmission services—largely within the Pacific Northwest.

There are those who mistakenly believe that Bonneville is somehow subsidized by the federal government. I would argue that BPA—and the Northwest's electric ratepayers—actually provide a subsidy back to the Treasury and the US taxpayer.

We are providing both short term and long term subsidies to the Treasury.

In the short term—in 1994, we refinanced BPA's appropriated Treasury debt at current interest rates, thus eliminating the argument about interest rate subsidies.

In that legislation, we also agreed to give the Treasury $100 million over and above what BPA had previously owed. Think of it as points on a home loan—it was a $100 million gift from Northwest ratepayers to the U.S. taxpayer.

Let me carry the home purchase analogy a step further.

BPA and the citizens of the Pacific Northwest are repaying most of the original construction costs of the federal dams on the Columbia and Snake Rivers. But even after we repay the Treasury for those costs—with interest—the U.S. taxpayer will still own the assets.

That would be as if after paying off the mortgage on your home, the bank still retained ownership of the house and property.

If that isn't a subsidy FROM the Northwest to the US Treasury, I don't know what is.

But not only are we repaying the costs of the federal investments in the region, we are funding an incredibly expensive and ambitious salmon recovery effort on the Columbia and Snake Rivers—an effort that will soon have a price tag of more than $500 million a year—all paid for by Northwest residents.

I don't know of any other part of the country that is spending as much on its endangered species problems.

Finally—I should add a word on the broader issue of restructuring.

There are genuine problems in the functioning of wholesale electricity markets—problems that cry out for a legislative solution. I believe that we can probably come to a consensus on legislation addressing the problems that constrain wholesale markets.

But as you know, that consensus quickly breaks down when we turn to the subject of retail competition.

I am very skeptical about whether average consumers will benefit from retail competition. Especially in a low cost region like mine, it is very dubious whether there would be any benefit—and under many scenarios, consumers could be harmed.

I continue to believe we should let the states experiment in this area and focus our attention on improving wholesale markets until we have more experience to draw from on the subject of retail competition.

That said, I thank the committee for holding this hearing and look forward to working with you.

Mr. BARTON. Thank you Congressman.

Mr. DEFAZIO. I owe you.

Mr. BARTON. Yes.

We would now recognize Mr. Clement, who was the first member present for his statement.

STATEMENT OF HON. BOB CLEMENT

Mr. CLEMENT. Thank you, Mr. Chairman, and members of the Energy and Power Subcommittee. I learned a long time ago, in the U.S. Army, to be on time. I am not sure it always works that way.

Mr. DEFAZIO. Are you digging at me?

Mr. CLEMENT. No, absolutely not, Peter.

Mr. DEFAZIO. I am chairing your subcommittee.

Mr. CLEMENT. Thank you.

As a former TVA board director, TVA caucus chairman, and former chairman of the Tennessee Public Service Commission; and representing the 5th Congressional District of the State of Tennessee, we are very concerned, but we are very exited, about the possibilities for the 21st century, when it comes to utility deregulation and restructuring.

We do want all regions of the country treated fairly. We don't think that it is too much to ask. We also realize that airline deregulation, trucking regulation, telecommunications—all combined—are not as large as what we are talking about now, when we refer to electricity/utility restructuring and deregulation. We realize that in this country we have the private, investor-owned utilities, but we also have the public, such as Bonneville, the PMAs and TVA.

We think that it might make a lot of sense in this country to have public and private. You know, a lot of us in Congress sort of like public and private ventures. We have been able to accomplish much in this country and in our communities by public/private cooperation. Maybe the same thing applies, even in this sector, when we talk about the public power, versus private power. Maybe we need that comparison. Maybe we need that contrast to see how they both work. We want them to work efficiently.

We feel like in the Tennessee Valley area at times there has been a lot of so-called misinformation and miscommunication. That surely applies to the money that it appears we will not get this year—the $50 million for flood control and navigation—simply because we utilize TVA as the vehicle to provide for flood control and navigation, where other parts of the country don't have TVA. Therefore, they utilize the Corps of Engineers, or other entities, to provide those same services. We honestly don't think that we ought to be penalized simply because we funnel those funds through TVA.

The working consensus of the many stakeholders of TVA power illustrate our region's willingness to enter into a new era of competition. TVA will be subjected to new constraints on its activities, while at the same time the Tennessee Valley region will be open to new competition from others. We don't fear competition, but we do want it to be fair. Under the administration's bill, these provisions with TVA and TVPPA are largely in agreement.

We do feel that some of the provisions that we were debating in the last Congress have been dropped; such as the fence, which permitted private power companies, investor-owned utilities, to sell power in the Valley area, but we could not sell power outside the Valley area. We thought that was very unfair. It has been dropped, now.

We also had a provision, in the last Congress, that pertained to the fact that we couldn't have any new generation facilities in the future. That provision has also been dropped.

TVA, for the first time, would be subject to the anti-trust prohibitions. TVA's transmissions rates would be subject to FERC jurisdiction. Competitors could sell, without limitation, in the TVA region. TVA would be required to renegotiate its existing, full-requirements contracts with distributors within 1 year after enactment. TVA could sell outside its region, but only at wholesale. TVA could

sell, only at retail, to grandfathered customers or other very limited circumstances.

Let me say to the IOU's, I know you want to expand your market. I know you want to make more profit, but you are not the watchdog for the Tennessee Valley Authority. We, in Congress, have that authority. We, in Congress, must fulfill that responsibility—individual members, as well as collective members—when it comes to TVA, since it is a federally regulated agency.

Mr. BARTON. Congressman?

Mr. CLEMENT. We do think we are making great progress. I might share with you that in a lot of different fronts, we are very pleased with the 10-year business plan. We want to hold TVA's feet to the fire when it comes to reducing their debt in half over the next 10 years, by the target date of 2007. Thank you, Mr. Chairman.

[The prepared statement of Hon. Bob Clement follows:]

PREPARED STATEMENT OF HON. BOB CLEMENT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Good morning. I want to thank Chairman Barton and Ranking Member Hall for affording me the opportunity to testify before your committee today on the role of federal power in a competitive electric utility industry. Your leadership and the work of this committee will be pivotal in shaping the future of our nation's electric power industry—an industry that affects every aspect of our lives.

As a former TVA Board Director, TVA Caucus Chairman, Tennessee Public Service Commissioner, and as the Member of Congress representing the 5th district of Tennessee, I could spend an awful lot of time talking about TVA and its importance in the Tennessee Valley. I understand the challenges it faces today, its historic role in the valley, and what deregulating the electric utility industry could mean for TVA's ratepayers. Although I am not a member of the Commerce Committee, I have spent a lot of time working on the issue of electricity restructuring. Based on my credentials, you can tell that TVA affairs are very important to my constituency and me.

Recently, the Department of Energy released its electricity competition proposal. In all, I am pleased with the Administration's bill and the provisions it includes in its TVA Title. While I support the concept of consumer choice, I also feel very strongly that we must not rush into anything. With deregulation, some of the high cost areas of the country will see rates decrease, but regions like ours could very well see power rates increase. If we pass a comprehensive restructuring bill, we must do it right.

TVA and the Tennessee Valley Public Power Association (TVPPA), the distributors of TVA Power, have worked with the congressional delegation and the Administration to forge common ground and consensus on key issues that will face our very unique situation in the Tennessee Valley. I know they are here today and will be offering testimony to discuss their perspectives on electricity restructuring. The work and consensus of the many stakeholders of TVA power illustrate our region's willingness to enter a new era of competition. TVA will be subjected to new constraints on its activities, while at the same time, the Tennessee Valley region will be open to new competition.

In the Administration's bill are several key provisions for which TVA and TVPPA are largely in agreement:

- TVA, for the first time, would be subject to antitrust prohibitions.
- TVA's transmission rates would be subject to FERC jurisdiction.
- Competitors could sell, without limitation, in the TVA region.
- TVA would be required to re-negotiate its existing full-requirements contracts with distributors—within one year after enactment.
- TVA could sell outside its region, but only at wholesale.
- TVA could sell only at retail to "grandfathered" customers or in other very limited circumstances.

While many individual states throughout the nation have made their own choices about whether, when, and how to bring retail competition to their states, TVA's federal status and the fact that it reaches into seven states requires a regional solution

in a federal bill. Naturally, in any kind of federal bill my priority will be that the TVA region and its customers are treated fairly and without bias.

Unfortunately, there are several forces that will try to convince this committee to include legislative provisions that could severely threaten the future of TVA. For years, TVA has been the target of attack from various regions of the country. Time and again, investor-owned utilities claim TVA power customers are subsidized by federal tax dollars. The investor-owned utilities, who often carry higher power rates, fail to point to one key aspect of the rate differential between TVA and the IOUs. TVA does not operate for a profit, it operates plain and simple to produce the lowest cost electricity it possibly can. It's really pretty simple.

I find it interesting that so much time, energy, and money is being spent here in Washington to actually lobby against TVA. You know, we have sure enjoyed good economic times in the valley and low cost, reliable electricity certainly helps fuel the fire for our strong economy. I can't blame other power companies for setting their sights on the possibility of selling power to TVA customers. But let's be perfectly clear. The so-called "watch dogs" of TVA are anything but that. They have one motivation—picking off customers from TVA to add to the profits of their companies. I truly must question their motivations. These groups claim they are trying to "ensure TVA doesn't violate the law." I've got news for these groups—that's our job in Congress. I have been, at times, a staunch critic of TVA and I have been supportive. As a member of Congress and the committee with jurisdiction over TVA, I hold that responsibility very sacred.

To get back to the main issue, we, members of the delegation, are concerned about maintaining low cost electric rates for our constituents and for our economic base. Any Member, if they were in our shoes, would do exactly the same.

Today, I am pleased to say that TVA is on the right track. TVA's nuclear program's capacity factor is 91 percent, compared to an industry average of 78 percent. The fossil program has also seen dramatic improvements—in the past decade the capacity factor has increased by 20 percent. And the entire TVA generating system—fossil, nuclear, and hydro—has the lowest generating costs among utilities in the region.

TVA management is implementing a "Ten Year Business Plan." This plan will continue to encourage TVA to prepare for deregulation while it reduces its debt. GAO recently released a report that confirmed TVA's plan was focused on the right issues and had properly addressed these issues. While GAO calls to question some of the assumptions used by TVA in the formulation of its plan, in all TVA is taking necessary steps to prepare for deregulation. I do, however, call on TVA to accelerate their debt reduction plan to meet the original target date of 2007.

Mr. Chairman, I commit to work with you and with this Subcommittee in developing and moving a bill to bring greater competition to the electric industry and new competition to the Tennessee Valley. I also ask you to work with me and others from the Valley Delegation, and to recognize the importance of what we have done already in developing a regional consensus for TVA's role in a competitive market.

Thank you very much.

Mr. BARTON. Thank you, Congressman. We don't have a new member of the subcommittee, but we do have Congressman Jenkins, who has asked to observe our hearing today. We welcome you to these proceedings. We don't want our Democrat friends to think that we have changed the committee ratio. We have not. He is just observing.

Mr. Franks, we will recognize you for 5 minutes, to summarize your statement.

STATEMENT OF HON. BOB FRANKS

Mr. FRANKS. Mr. Chairman, thank you very much for the opportunity to testify today. While I recognize that the scope of today's hearing is somewhat limited, I don't want to lose sight of the fundamental question that has been raised by Mr. Hall. That is: should the Federal Government remain in the business of generating and selling electricity?

While government involvement in the electricity market may have been justified some 70 years ago, when only 15 percent of

rural Americans enjoyed electricity, times have changed dramatically, since then. Strong private-sector electricity companies exist throughout this country. As evidenced by your panel's prior hearings on utility deregulation, these private-sector firms are strong, active and ready for competition.

Other than meeting the parochial, political need of providing ongoing taxpayer subsidies to a few select consumers, Federal utilities are simply no longer necessary. I began to focus my attention on these Federal utilities about 3 years ago, when I realized my New Jersey residents pay some of the highest rates in the Nation. But their tax dollars are being used to keep the price of electricity at below-market rates for Federal utility customers. Not only is this misguided Federal policy taking money out of the pockets of New Jersey taxpayers to finance low electric rates for folks in other regions of the country, it is also luring businesses and jobs out of my State. It is hard to convince energy-intensive industries, particularly those in the manufacturing sector, to stay in New Jersey—or in any other State that doesn't have access to public power—when they can simply pack up and move to an area that is served by one of these PMAs or the TVA.

It was back in 1930 when Washington first decided to generate market-cheap power as a tool to promote economic growth in poor and rural areas. But today, these so-called poor and rural areas that enjoy federally subsidized electricity include areas like Vail, Colorado; Hilton Head, South Carolina; Palo Alto; California, and Seattle, Washington. A recent General Accounting Office study concluded that most of the households served by Federal utilities are in relatively small, urbanized areas. Many of those areas are quite well-off, and don't require these taxpayer subsidies. GAO also found that electricity from power marketing administrations is sold at 40 percent below market rates.

I know my constituents would love to take advantage of that bargain-basement electric rate. They simply can't understand why their tax dollars are being used to deliver cheap power to people living in communities like Aspen and Hilton Head. Of course, the advocates of the status quo—the recipients of federally subsidized electricity—continue to claim that they are not subsidized. But again, citing the GAO, if 40 percent below market rates is not subsidized, I do not know what is.

The beneficiaries of Federal electricity will also argue that they are paying the full cost of their electricity. But the GAO further found that between 1992 and 1996, three PMAs: Southeastern, Southwestern and Western, failed to recover $1.5 billion of their costs, leaving that burden to Federal taxpayers. Recipients of Federal electricity don't like the GAO or the CBO studies. They will argue strenuously that they are flawed.

But who are we going to believe today? This institution's top independent auditors are the self-interested beneficiaries of the current taxpayer give-away. Along with my colleague, Marty Meehan, for whom I would like, Mr. Chairman, to add a statement to the record.

Mr. BARTON. Without objection.

[The prepared statement of Hon. Marty Meehan follows:]

PREPARED STATEMENT OF HON. MARTIN T. MEEHAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. Chairman and Members of the Subcommittee. I appreciate your interest in restructuring the federal government's electric power companies. While I want to support Rep. Bob Franks' call for questioning the very relevance of federal utilities in a competitive energy market, my remarks this morning will focus on the Tennessee Valley Authority.

Let me first say that TVA has done a good job. Beginning in the 1930s, it delivered cheap electricity to thousands of rural households and brought new life and hope to the then-depressed Tennessee Valley. We all should be proud of that success.

Fortunately, times have changed, and the Tennessee Valley is a thriving region. TVA needs to change as well.

Restructuring TVA is not a partisan issue. Although the federal agency was created by Franklin Roosevelt, Democrats certainly cringe at the utility's enormous debt, mismanagement, and abusive business practices. Last year the Judiciary Committee, on which I sit, held a hearing on TVA's anti-competitive activities associated with a customer that wanted to shop for cheaper electricity. Liberals on my committee lamented that FDR would be rolling over in his grave at the sight of what TVA has become.

Restructuring TVA also is not a regional issue. No doubt the Northeast-Midwest Congressional Coalition has complained about how its residents' tax dollars are subsidizing the giant utility. But Senator Mitch McConnell, a Republican from the Valley, has called for ending TVA's special privileges. And later in this hearing, you'll hear from the Memphis utility about how it and other TVA customers would welcome the chance to escape TVA's iron grip and to enjoy the benefits of competition.

Perhaps TVA's biggest problem is that it lacks accountability. Since the giant utility maintains monopoly control over its service territory, it is not accountable to market forces. Its Board members are not answerable to the voters. Their decisions are not reviewed by state or federal regulators.

Why is this reaccountability troublesome? Consider TVA's massive debt. Where was the oversight when the giant utility accumulated a $28-billion debt—and an additional $8.5 billion in deferred assets—while enjoying monopolistic control over its customers?

Other signs of mismanagement were revealed in a report by TVA's own Inspector General, who criticized the agency's six-figure bonuses and secret retirement funds for top executives, and non-competitive consulting contracts to cronies of those officials. Allow me to quote from the *Chattanooga Times*, a key Valley newspaper that usually defends TVA: "One of the most egregious abuses is in the area of compensation. TVA secretly established a Senior Executive Retirement Plan in 1996 and funneled almost $5 million in previously undisclosed contributions through it to 24 high-ranking managers . . . TVA's free-flowing millions on consulting contracts are equally disturbing. Excessively generous contracts are given to cronies or friends of top managers without bids or acceptable oversight. The practice suggests responsible fiscal management is not being applied and undermines TVA's integrity."

TVA's unaccountability also is reflected in its arrogance. The utility's chairman, when asked by a national magazine about the agency's future, boasted, "You can't ignore us, you can't leave us behind, you can't break us up, and you can't sell us."

Well, let me say that this hearing and the growing calls for reform suggest that Congress can indeed restructure TVA and hold it accountable.

No doubt TVA is a burden to the nation's taxpayer, but it also is of declining benefit to the Tennessee Valley. TVA is one of the nation's worst air polluters, spewing tons of sulfur dioxide and nitrogen oxides into the Valley's atmosphere and threatening the health of its residents. Despite enormous taxpayer subsidies, years of mismanagement and bad decision making have resulted in TVA's rates no longer being a bargain; many Valley residents see surrounding private utilities offering cheaper rates, and new competitors promising even lower costs.

Unfortunately, TVA has trapped Valley residents. The agency has locked its customers into long-term contracts that have been virtually impossible to break.

What to do? First, Tennessee Valley residents, like consumers across the country, deserve the right to enjoy the benefits of competition. Second, private-sector power companies need to be assured that TVA does not maintain unfair competitive advantages. Third, the nation's taxpayers need to be protected from TVA's mismanagement and unnecessary subsidies.

Congress must first Justify why the federal government should be generating electricity in a competitive market. Yet even if TVA remains a government agency, Con-

gress must ensure that it competes on a level playing field and operates according to the same rules and regulations that apply to other power producers.

Thank you, Mr. Chairman, for this opportunity to discuss the restructuring of federal utilities. I look forward to working with you.

Mr. FRANKS. I have introduced a bill that would promote common sense PMA reform. With national electricity reform just over the horizon, subsidies for Federal utilities are unacceptable. We must eliminate them, once and for all. Our legislation, H.R. 1486, simply orders the PMAs and the TVA to charge market-based rates for their power, not rates subsidized by Federal taxpayers.

In addition, it directs the PMA and TVA transmission facilities to be subject to open-access regulation by FERC. Our bill forces PMAs to charge market rates for power, and makes the PMAs operate under the same rules that govern the rest of the power industry.

Mr. Chairman, I appreciate your call to reform Federal utilities. Congress should not, and truly, cannot restructure the Nation's electric power industry without restructuring our own Federal utilities. Put simply, we must end taxpayer subsidies and put the Federal Government out of the power business, once and for all.

[The prepared statement of Hon. Bob Franks follows:]

PREPARED STATEMENT OF HON. BOB FRANKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman and Members of the Subcommittee. Thank you very much for allowing me to testify on the role of federal utilities in a competitive electricity market. I welcome the Energy and Power Subcommittee's efforts to help *reform* the *regulation* of TVA's wholesale electricity business.

While I recognize that the scope of today's hearing is limited, I hope that we will not lose sight of the fundamental issue—should the federal government remain in the business of generating and selling electricity?

While government involvement in the electricity market may have been justified 70 years ago when only 15 percent of rural Americans enjoyed electricity, times have changed dramatically since then. Strong private-sector electricity companies exist throughout this country. As evidenced by this panel's other hearings on utility deregulation, these private-sector firms are strong, active, and ready for competition.

Other than meeting the parochial need of providing ongoing taxpayer subsidies to a few select consumers, federal utilities are simply no longer needed.

I began to focus my attention on federal utilities about three years ago when I realized that while New Jersey residents pay some of the highest electric rates in the nation, their tax dollars are being used to keep the price of electricity at below market rates for federal utility customers. Not only is this misguided federal policy taking money out of the pockets of New Jersey taxpayers to finance low-cost electric power in other regions of the country, it is also luring businesses and jobs out of my state. It's hard to convince energy-intensive businesses—particularly in the manufacturing sector—to stay in New Jersey—or in any other state that does not benefit from federal utilities when they can simply pack up and move to an area with subsidized power.

It was back in the 1930s when Washington first decided to generate and market cheap power as a tool to promote economic growth in poor and rural areas.

Today, some of these so-called "poor and rural" areas that enjoy federally subsidized electricity include Vail, Colorado; Hilton Head, South Carolina; Palo Alto, California; and Seattle, Washington.

A recent General Accounting Office study concluded that most of the households served by federal utilities are in a small number of urbanized areas, and many of those areas are quite well off and don't need taxpayer subsidies.

GAO also found that electricity from Power Marketing Administrations is sold at 40 percent below market rates. I know my constituents would love to take advantage of such bargain-basement electricity. And they can't understand why their tax dollars are being used to deliver cheap power to people living in Aspen and Hilton Head.

Of course, the recipients of federal electricity continue to claim they are not subsidized. If 40 percent below market rates is not subsidized, I don't know what is.

The beneficiaries of federal electricity also will argue that they are paying the full costs for their electricity. But the GAO found that for fiscal years 1992 through 1996, three PMAs—Southeastern, Southwestern and Western—failed to recover $1.5 billion of their costs, leaving that burden to federal taxpayers.

Recipients of federal electricity don't like the GAO or CBO studies, and they will argue strenuously that they are flawed. But who are you going to believe—this institution's top independent auditors or the self-interested beneficiaries of a taxpayer giveaway?

Along with my colleague Marty Meehan, I have introduced a bill that would promote common sense PMA reform. With national electricity competition just over the horizon, subsidies for federal utilities are unacceptable. We must eliminate once and for all the billions of dollars in power subsidies to PMAs, which have been documented by both the CBO and GAO.

Our legislation, H.R. 1486, the Power Marketing Administration Reform Act of 1999 simply orders the PMAs and the TVA to charge market-based rates for their power—not rates subsidized by federal taxpayers. In addition, it directs that PMA and TVA transmissions facilities be subject to open-access regulation by FERC. Our bill forces PMAs to charge the going rate for power and makes the PMAs operate under the same rules that govern the rest of the power industry.

H.R. 1486 also helps reduce the federal debt and improve the environment. If the going rate for power is higher than the artificially subsidized rate—which it probably will be—H.R. 1486 uses the revenues to reduce the deficit and to set up a fund for environmental restoration of the affected rivers.

A broad array of environmental and taxpayer groups are supporting this sensible approach to PMA, reform.

Mr. Chairman, I appreciate your call to reform federal utilities. Congress should not, and cannot truly restructure the nation's electric power industry without restructuring our own federal utilities. Put simply, we must end taxpayer subsidies and get the federal government out of the power business once and for all.

Mr. FRANKS. Mr. Chairman, I apologize to beg leave, but I am very late for my own subcommittee.

Mr. BARTON. I think given what you have just said, it is probably wise that you leave the room.

Mr. FRANKS. I look forward to returning, Mr. Chairman.

Mr. BARTON. Okay. Thank you for your testimony.

We recognize the distinguished gentleman, and one of the most valuable players from last year's congressional baseball game, Mr. Zach Wamp, for 5 minutes.

STATEMENT OF HON. ZACH WAMP

Mr. WAMP. Thank you, Mr. Chairman, and thank you all the members of this very influential subcommittee, especially at this time.

Let me say, Mr. Chairman, you said in your opening statement that TVA was open to competition and open to this legislation. I want to say that you are absolutely right. TVA has been preparing, for a number of months and even years, for this day, and for this legislation to begin working its way through the Congress.

Let me also open on a note of caution. I have lived for 40 years in Chattanooga, Tennessee. Twenty years ago, airline deregulation was signed into law. The country, overall, was better off. Competition was increased. Access was increased. Rates came down. But 20 percent of the country is worse off. We are still struggling, terribly, in Chattanooga, Tennessee, with higher airline fares; lower access, and less competition, because there were winners and losers.

This has long-term, major consequences for 8 million people in the foothills of Appalachia, in what is called the Tennessee Valley. I hope we will be very methodical, very careful, and ultimately, fair

to both the investor-owned utility industry and public power; because this is very serious business.

It just so happens, that a disproportionate share of the losers in airline deregulation are in the same region. So we don't need to be hit so often with deregulation initiatives that may help the country, as a whole, but hurt certain parts of the country more.

I want to focus, briefly, on three major issues. One is TVA's 10-year business plan; two is the regional consensus that has been developed within the 7-state, 8-million-customer, TVA service area, and three is some basic principles that still need to be resolved as we move legislation through the subcommittee.

First of all, TVA is moving in the right direction with their current management plan and the 10-year business plan. TVA management should be commended on their focus to prepare TVA for competition by reducing debt, making rates more competitive, and by implementing the rest of the details of the 10-year plan. While the recent GAO report points out that TVA may not achieve the level of debt reduction stated in the plan until 2009—2 years later than the plan called for—GAO did acknowledge, ''However, since it is not possible to accurately predict what the market price of power will be in 2007, TVA could still achieve its objective of offering competitively priced power, even if it does not fully achieve the Plan's other goals and objectives.'' The GAO report clearly says, too, that TVA is, in a major way, reducing its debt. We have already heard testimony earlier today about how much it has already been reduced. You are going to hear more of that as the day goes on.

Second, both the Tennessee delegation and TVA caucus encourage TVA and the Tennessee Valley Public Power Association, which represents TVA's 159 distributors, to come up with a regional solution to electricity restructuring. I applaud TVA and TVPPA for working together to come to agreement on guiding principles for electricity restructuring that best serves the needs of the entire Valley. Both will be testifying more about their proposals today, and in the future. The subcommittee needs to understand that getting TVA and its distributors to come to agreement on a majority of the issues is a major accomplishment, reached only through hard work and compromise. The issues they have reached consensus on include: equitable competition; TVA power sales; stranded investment recovery; anti-trust coverage, and the renegotiation of wholesale power contracts.

The third issue is the basic principles. The administration/DOE bill is very similar to the consensus position reached by TVA and TVPPA. However, there are some difference between the consensus position and the draft being circulated by subcommittee members that we hope we can reach agreement on. All the proposals pave the way for competition by bringing the fence down both ways: allowing competition into the TVA region, and allowing TVA to sell excess wholesale power outside the TVA region. But everyone should understand that TVA will continue to focus on its primary mission, and that is serving the customer needs of the Tennessee Valley.

TVA also must retain its ability to build generating capacity. TVA must have the flexibility to build new generation if it is going to be able to continue to meet the power needs of the Valley. This

continues to be a major hurdle between the subcommittee drafts and a fair resolution for these 8 million customers in the 7-state region.

In closing, let me raise one other issue that we might need to begin discussing today: that is, TVA's management is improving. TVA is improving. There is clear data to that effect. But it still operates under a three-member, Presidentially appointed, board of directors. Beginning next week, for a short period of time—I hope—only one of those board members will be serving. Senator Frist, from Tennessee, has proposed expanding the TVA board to increase accountability and improve the management of the future TVA. I want to commend the current management for the strides that have been taken; but I think that as we move this major, comprehensive, direction-changing legislation, we should consider expanding the TVA board of directors to increase the accountability overall, so that it may be more like a corporate board in today's climate, where just a handful of people don't make decisions for a $6.7 billion power company.

I thank the chairman for giving me this opportunity.

Mr. BARTON. Thank you. I am sure our friends from Washington State will understand that the Tennessean—it just takes him a little bit longer to get it out.

We would recognize the gentleman from Washington State, Dr. McDermott, for an opening statement.

STATEMENT OF HON. JIM MCDERMOTT

Mr. MCDERMOTT. Thank you, Mr. Chairman. I want to commend you for holding a hearing in which you brought the right, the left and the center, together. That you could get Peter DeFazio, Doc Hastings, me, and George, all coming here to say the same thing is a real statement about this issue and the effect it has in our area.

One of my former colleagues in the state senate used to say that the eastern two-thirds of the State of Washington was a place where the jackrabbits had to carry canteens before the Bonneville Power Administration. It was a desert. There was dry land, wheat, and that was about it.

Our State is basically an agricultural State. In spite of what you might think—with Boeing, Microsoft, and all the rest—the biggest industry in our State is agriculture created by the Bonneville Power Administration. So its affect on our State is from border to border.

In my city of Seattle, the voters favored public ownership of power, beginning in 1902 when they voted for a $590,000 bond issue. Now, that established our public power system. That has been the system in the Northwest, since that point. In 1937 the Bonneville Power Administration was created. That expanded it out of the city.

Cities, like Seattle, have been tied to this in good times and in bad. From the beginning, BPA entered a partnership with the Northwest to bring low rates, industrialization and rural electrification. This partnership resulted in a unique role for BPA and many benefits for the region. Obviously, one of the benefits has been low cost; but there have been costs for our area. The North-

west has been paying that costs. The region agrees that BPA must continue to pay its full share of Federal obligations, including those for fish costs and other public purposes.

One of the major issues today we are dealing with is how we deal with the listing of the salmon as an endangered species, and what that means for the power generation in the area.

In 1996, the Governors of Washington, Oregon, Montana, and Idaho, appointed a four-member, Northwest Energy Review Transition Board to oversee the recommendation of the 1996 comprehensive review. The Transition Board is responsible for assuring accountability, acceptance and implementation of those recommendations. The Transition Board works with the regional interests and the BPA to oversee the development of a subscription process for the sale of BPA power. The Transition Board also works with the Northwest Congressional Delegation, reviewing BPA's marketing plan and its control in the competitive electric market. It provides guidance of the implementation of the other review recommendations.

In 1997, as you heard from Peter DeFazio, we established an NW Energy Caucus. It is bipartisan. Everybody is in it. In less than 2 years since we began, the members and staff have been working with representatives of all the regional stakeholders, and have spent countless hours working to achieve a consensus which—we hope in any bill that we have—will have a title for the Northwest, or for BPA.

Amazingly, we came to an agreement that the BPA's benefits should be retained in the region. It is often suggested, however, that the best way to retain the regional benefits, and to generate revenue for the Federal Government, is to sell BPA. This is a simplistic-sounding solution that, actually, is extraordinarily complex—as this committee will find as you begin to dig into the details.

Unlike private power companies, BPA operates under its own statutes; has a very different regulatory role, and has Canadian treaty obligations. Additionally, BPA still owes billions of dollars to the Federal Treasury for the Washington Public Power Supply System, which is known generally as "WPPSS." Those nuclear plants: they planned five; only one was built, but the costs are still having to be paid off by the region.

BPA is also obligated to fund fish and wildlife mitigation resulting from the impacts of power generation. So privatizing the BPA would shift these obligations from the ratepayers in the Northwest to the American taxpayers. Most importantly, there is no certainty that privatizing BPA would generate revenue for the Treasury.

To privatize BPA, because you pray at the altar of the market, is not compelling. The market power that a privatized BPA would have is tremendous. BPA would own 80 percent of the region's transmission lines. If you sold it, BPA would control the market and set its own price. Even if the BPA were broken apart, its individuals parts would still have significant market power. For instance, the Grand Cooley Dam controls the downstream dams in Doc Hastings district. There are three counties that have their own dams: Chelan, Douglas and Grant Counties. But the Grand Cooley is above it and controls the water flow. So if you sell that to a pri-

vate operator, you then throw some other public utilities into serious problems.

For more than 60 years, the BPA has sold low-cost, reliable power to the Northwest. It is an integral part of the prosperity and heritage of the region. To change that covenant now needlessly breaks faith with the region. It is not clear that the privatizing of BPA would result in a windfall for the Treasury. What is clear is that privatizing BPA would complicate the market in the Northwest, placing the burden of numerous obligations squarely on the shoulders of the American taxpayers.

Let me give you one example.

Mr. BARTON. Make this the last example.

Mr. MCDERMOTT. Potatoes. Everybody think potatoes come from Idaho. Washington grows more potatoes than the rest of the world—or any other State in the Union. And McDonald's french fries come out of that area. So if you want to fool with McDonald's prices, starting fooling with BPA and the water that irrigates the potato fields that makes McDonald's potatoes.

[The prepared statement of Hon. Jim McDermott follows:]

PREPARED STATEMENT OF HON. JIM MCDERMOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Chairman Barton, Congressman Hall, and Members of the Committee, thank you for inviting me to testify today on the importance of the Bonneville Power Administration (BPA) to the Pacific Northwest.

In my city, Seattle, voters have supported public ownership of the city's water and electric system since 1902 when they approved a $590,000 bond to develop a hydroelectric facility on the Cedar River.

Support for public power was cemented in 1937, when President Roosevelt signed the Bonneville Project Act. BPA has become an integral force in the development and heritage of the region. Seattle, like cities across the Northwest, have maintained their support of public power in good times and in bad.

From the beginning, BPA entered a partnership with the Northwest to bring low rates, industrialization and rural electrification to the region. This partnership resulted in a unique role for BPA and many benefits to the region. However, with these benefits comes a cost. The Northwest has been paying that cost and the region agrees that BPA must continue to pay its full share of federal obligations, including those for fish costs and other public purposes.

In 1996, the governors of Washington, Oregon, Montana, and Idaho appointed a four-member Northwest Energy Review Transition Board to oversee the recommendations from the 1996 Comprehensive Review. The Transition Board is responsible for ensuring accountability, acceptance, and implementation of the recommendations. The Transition Board works with regional interests and BPA to oversee development of a subscription process for the sales of BPA's power. The Transition Board also works with the Northwest congressional delegation, reviews BPA's marketing plan and its role in the competitive electricity market, and provides guidance in the implementation of the Comprehensive Review's other recommendations.

In 1997, members of the Northwest congressional delegation formed the Northwest Energy Caucus. Every member of the delegation joined in an effort to reach a regional consensus on electric industry deregulation. In the less than two years since the Caucus has been in existence, the Members and our staffs have met with representatives from all the regional stake holders and spent countless hours working to achieve a consensus. The Caucus agrees that BPA's benefits must be retained in the region.

It is often suggested that the best way to retain regional benefits and to generate revenue for the Federal government is to sell BPA. This simplistic sounding solution is actually extraordinarily complex. Unlike private power companies, BPA operates under its own statutes and a very different regulatory role, and has Canadian treaty obligations. Additionally, BPA still owes billions of dollars to the Federal Treasury for the Washington Public Power Supply System (WPPSS) nuclear plants, only one of which was ever completed. BPA is also obligated to fund fish and wildlife mitiga-

tion resulting from the impacts from power generation at Federal Dams. Privatizing BPA would shift these obligations from the rate payers in the Northwest to the American taxpayers. Most importantly, there is no certainty that privatizing BPA would generate revenue for the Treasury.

To privatize BPA because you pray at the altar of the market is not compelling. The market power that a privatized BPA would yield is tremendous—BPA owns 80% of the region's transmission. If sold, BPA would control the market and set its own price. Even if BPA were broken apart, its individual parts would still have significant market power. For instance, the Grand Coulee dam controls the down stream dams on the Columbia River. Clearly, BPA is a significant force in the Northwest.

For more than 60 years BPA has sold low cost, reliable power to the Northwest. And, is an integral part of the prosperity and heritage of the region. To change this covenant now, needlessly breaks faith with the region. It is not clear that privatizing BPA would result in a windfall for the Treasury. What is clear is that privatizing BPA would complicate the market in the Northwest, placing the burden of numerous obligations squarely on the shoulders of American taxpayers.

I look forward to working with the Committee on this issue.

Thank you.

Mr. BARTON. We are not going to make Ronald McDonald mad, I assure you.

Mr. MCDERMOTT. Thank you. Thank you for your time.

Mr. BARTON. I want to commend you. You went through about 40 pages of written testimony in 5 minutes. That is not bad; that is pretty good.

Mr. Hastings—Doc—Congressman Hastings, who has worked with this committee on a number of other issues with Hanford, we will put your statement in the record and recognize you for 5 minutes to summarize it.

STATEMENT OF HON. DOC HASTINGS

Mr. HASTINGS. Thank you very much, Mr. Chairman. I want to remark to my colleague, Mr. McDermott's saying that somebody that has disparate political views coming together on this issue; this will probably be the only issue on which we will all agree. We probably won't make a habit of this. Nevertheless, we are here in this regard.

I would agree with what my two colleagues from Oregon and what Mr. McDermott said, in general, from this standpoint: that is, you will hear as you embark upon this—you have already heard it today, and undoubtedly you will hear it more and more—that various parts of the country are very unique. Certainly, Washington State, the Northwest: Oregon, Washington, Idaho, and Montana are unique from the standpoint of power producing, because so much of our power is produced by hydropower. Then you overlay that, particularly in our State, with decisions that were made within our State of public power. These are some things that for people in my district, especially, that decision was made 60 years ago.

Yet, as we embark upon this, and as you go down the line of deregulating as we move into more market areas; obviously, that will have an effect on us as to what the final disposition is. When I went home and talked to my PUD's and those people that were involved, the first question they said to me was, "Why do we want to do this? We do have low-cost power." This is accurate. We do have low-cost power. My suggestion to them was this is an issue, in my view, that no longer is it the question of if we are going to have deregulation. The question is, when? It is prudent for us then,

within our region, to sit down and try to figure out how we fit in this whole puzzle.

So in that regard, we have been working with you and others on this committee. One of the messages that we are taking to you, because we think it is a valid one for all of the negative things that could come if we don't have this is the Northwest title. Then you have other conditions that fall into place. I am pleased that in initial conversations that we have had with you and other members that there will be a Northwest title. The administration has suggested that a Northwest title would be something that needs to work out.

If that were the case, then obviously the burden is on us within the Northwest on how we deal with our electricity and the structuring of that. We do have a precedent in place. It is called the Northwest Power Planning Council. That was passed just about 20 years ago to deal with the uniqueness that we have all been talking about.

So with that, I am very pleased to have had the opportunity to speak to you. We do have a Northwest energy caucus, bipartisan in nature. We are working on that. We don't, unfortunately, have a member of your committee. I do appreciate, very much, the courtesy that you have given me. I know I speak for my colleagues as to how these concerns should be addressed.

So with that, Mr. Chairman, thank you very much for your courtesy.

Mr. BARTON. Thank you, Congressman.

And last, but certainly not least, we would like to hear from another Washingtonian, Congressmen Nethercutt, for 5 minutes.

STATEMENT OF HON. GEORGE R. NETHERCUTT, JR.

Mr. NETHERCUTT. Thank you, Mr. Chairman. It is my pleasure to be here before you and your subcommittee, and also with my colleagues from our State and our region.

I am proud to represent about one-fourth of the geographical area of our State. As Jim said, Doc and I represent about two-thirds of our State, all east of the Cascade Mountains. All are certainly dependent upon a power generation system that has developed over the years, I think, to the benefit of not just eastern Washington, but all parts of our Pacific Northwest region.

Grand Coulee Dam is the largest hydroelectric facility in the Nation. It provides 25 percent of the power in the Federal Columbia River Power System. It can serve 2 million homes for 1 year. It has that much power generated through that particular resource in our region. We also have, in the Fifth District, the Snake River hydroelectric facilities, which are under the jurisdiction of the Corps of Engineers.

So every single person in our State and in our region is affected by what happens to the Bonneville Power Administration. It is home to investor-owned utilities, public power, rural cooperatives and aluminum plants. It is of extreme importance to our region, not just my district, but our entire region. I think the fact that people are represented from Oregon, Montana, Washington, and Idaho—it all is important to us.

We are feeling a bit aggrieved because last Congress we had three members of the Northwest on this committee: Congresswoman Furse, from Oregon; Rick White, from our State, and Mike Crapo, from Idaho. So we appreciate, sir, your gracious welcome of us, and your consideration, as a subcommittee to the needs of our district. We need to have a good dialog with you. We hope that can continue. We know it will.

We do have a bipartisan energy caucus. We have common interests that span our entire region. I think we are speaking with one voice. That one voice, if I can summarize, is simply that we are unique. We do have special considerations in our region. We have a debt load. We have BPA owning, as was stated, about 75 percent of our transmission facilities. We have taken upon ourselves to deal with the listings of endangered species and threatened species. We have 12 listings, now, of fish that we need to deal with. The ratepayers of our region are paying the freight. They are paying for that consequence of the Endangered Species Act.

So I am here to say that we want to work with you. We are stepping up to the plate as a region, and as a delegation—a broad delegation—to deal with the problem that affects our region. We hope to have your consideration along the way toward what, as Congressman Hastings said, is probably, eventually, going to be deregulation in this country. If that happens, we want to make sure you understand our special needs and our unique circumstances.

So we thank you for your time. I hope my statement can be made part of the record. It goes into more detail and is, somewhat, repetitive. I want you to know that we are grateful for the opportunity. We look forward to working with you to make this work for our region, as well as our constituents, ratepayers and taxpayers. Thank you, very much.

[The prepared statement of Hon. George R. Nethercutt, Jr. follows:]

PREPARED STATEMENT OF HON. GEORGE R. NETHERCUTT, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Thank you Mr. Chairman and members of the Subcommittee for the opportunity to testify today on the future of the Bonneville Power Administration.

I represent the 5th Congressional District of Washington State, the eastern part of Washington State. My region is home to the Grand Coulee Dam, the largest hydroelectric facility in the nation, providing 25% of the power in the Federal Columbia River Power System—enough power to turn the lights on in more than 2 million homes for a year. In addition to this grand hydroelectric facility, the 5th Congressional District has four Corps of Engineers hydro facilities on the lower Snake River and is home to investor owned utilities, public power, rural cooperatives and aluminum plants—every one of my constituents is affected in some manner by the Bonneville Power Administration. I would like to emphasize, however, that the future of BPA is not a district by district or state by state issue in the Pacific Northwest—this is something that the *region* has and will continue to work on in a bipartisan manner. As the co-chair of the bipartisan Northwest Energy Caucus, my colleagues and I are committed to working together and with you to prepare Bonneville for a restructured electricity environment, protect the U.S. Treasury and maintain the benefits of the Federal Columbia River Power System for the region.

Mr. Chairman, before I go on, let me express my thanks for allowing Mr. DeFazio, Mr. Hastings, Mr. McDermott and myself to testify before the subcommittee on behalf of the Pacific Northwest delegation. Your staff has been most helpful in working with our offices over the past few months and it is appreciated. I especially appreciate the opportunity to represent the Pacific Northwest before your subcommittee with the departure of the three former Northwest members of the Committee, Representatives White, Furse and Crapo.

The Pacific Northwest faces many unique challenges as Congress moves toward restructuring the billion dollar electricity industry, but the Northwest is determined to face these challenges head on. In 1996, the region's four Governors released the Comprehensive Regional Review of the Northwest Energy System, a report intended to outline what the region must do to prepare the Pacific Northwest for the national push toward competition in the retail market. This report began the discussions our delegation has had for the past 3 years with BPA's customers in the region on what changes are necessary to federal statute and we have made significant progress. Recognizing the pressures from other parts of the country, this process went forward with the goal of protecting the federal taxpayer in Oklahoma or Texas from having to cover the debts incurred in the Pacific Northwest, while still maintaining the benefits of the system for the region's residents.

The region is working on language to subject BPA to application of the Federal Power Act, requiring BPA to operate more like other utilities and most importantly ensure that BPA meets its financial obligations to the U.S. Treasury. This has not been an easy task and when you hear from BPA's customers today you will hear that there is still work to do. But, we are all committed to moving this process forward and the delegation will continue to encourage the region to that end.

You may also hear discussions about Bonneville's debt load from my colleagues outside of the Pacific Northwest. Bonneville does carry a debt to the U.S. Treasury of $6.5 billion and yes, Bonneville has defaulted on treasury payment in the early 1980's but it has not missed a payment since 1984. In fact, since 1984 under the watchful eye of the Pacific Northwest delegation BPA has been accountable to the U.S. Treasury and to repayment of the $5.4 billion in debt incurred for the Washington Public Power Supply System. Because of the pressures from the Governors' regional review, the Pacific Northwest Congressional delegation and from our colleagues outside the region in Congress, BPA continues to cut its operating costs, has encouraged early retirement of some of its employees to reduce costs, and with the help of former Senator Hatfield and Senator Gorton placed a cap on the amount of spending on fish mitigation efforts. The Northwest delegation will continue to watch BPA closely to ensure that it maintains this level of financial discipline.

Let me remind my colleagues from outside the region that the Bonneville Power Administration is a unique entity. It provides 60% of the power for the region, owning almost 75% of the transmission lines and is the entity responsible for mitigating hydroelectric impacts on fish and wildlife. The Pacific Northwest region has 12 listed species of salmon that migrate through 8 federal dams and 5 non-federal dams on the Columbia and Lower Snake Rivers. BPA is responsible for mitigating hydro impacts on the listed species. This mitigation costs the ratepayers of the Pacific Northwest millions of dollars annually and some claim that the federal government has subsidized this effort. Let me point out that 70% of the funds used to mitigate impacts on salmon on the Columbia and Snake River System are reimbursed to the U.S. Treasury by the Northwest ratepayer. In fact, on some of the facilities up to 98% of the fish and wildlife mitigation efforts are reimbursed by the Northwest ratepayer. Finally, these listings may impact the way our river system is operated—let me say that there is no consensus on what changes may be made to the system—and I remind the committee and my colleagues that I do not support removal of any dams on this river system—but whatever the decision Congress authorizes, a federal cost share will be required—that will be incurred by the taxpayer, not just the Northwest ratepayer.

As you can see the debt incurred and the potential costs that may be required due to changes in the hydro system because of the Endangered Species Act, leave a big question on what the value of this system is to the taxpayer. Should the system be sold, as some outside the region advocate, the risk to the U.S. Treasury is real. The Pacific Northwest region is willing to take the risk of covering costs to the U.S. Treasury in order to maintain the benefits of the system.

Mr. Chairman and members of the Subcommittee, this has not been an easy job for our delegation and yes, we are at a disadvantage with the departures of our colleagues on your committee. But, we are willing to rise to the challenge and will do the work necessary to provide you a "Northwest Title" for you to meet your time line. Again, thank you Mr. Chairman for the opportunity to testify this morning. I look forward to working with you and your staff on this issue of great importance to the Pacific Northwest.

Mr. BARTON. Thank you. That concludes statements of the congressional panel. The Chair would just point out that given the turnout from Tennessee and Washington, we are glad there is not a California Power Authority.

They have 52 members. I am going to defer questions, since I can talk to these gentlemen on the floor. We are going to give the other members an opportunity, but encourage them to be brief in their questions because we do have two more panels.

Does Mr. Sawyer wish to ask questions of this panel? Does Mr. Norwood?

Mr. NORWOOD. Yes.

Mr. BARTON. You want to? Okay, you are recognized for 5 minutes.

Mr. NORWOOD. Thank you, Mr. Chairman. I am sorry the Tennesseans left. You noted that they talk slow. But one thing about it, when they do talk, you can understand what they say. They mean what they say, and are very plain about it. That is exactly what I intend to be now.

I am disappointed that Mr. Franks is not here, since he boiled this down to sort of a regional thing. I want to respond to him and for the record.

Part of my problem with their bill, the PMA Reform Act, is that it has the wrong name. If they would be honest and put the right name on it, I could live with it a little better. It should be entitled, since New Jersey can't control its own power rates and they have some of the highest rates in the Nation, "Let Us Make Everybody Else's Rates Go Up So We Can Be Competitive Act."

I suggest they spend a little more time looking internally as to why their rates are two to three cents higher than the national average, rather than being concerned how to raise my rates down in Georgia.

Now, Mr. Chairman, I would ask permission—unanimous consent—to totally rebut the statement made by Mr. Franks, and submit it for the record.

Mr. BARTON. You certainly can submit a statement for the record. I don't think that it is possible to give unanimous consent to totally rebut.

Mr. NORWOOD. Well, the statement is loaded, Mr. Chairman, with things that are simply not true.

Mr. BARTON. Would the gentleman wish unanimous consent to put a statement into the record?

Mr. NORWOOD. He does.

Mr. BARTON. Is there an objection to that? Hearing none, so ordered.

Mr. NORWOOD. Thank you, very much, Mr. Chairman. I will conclude simply by saying things like stating to the public that power marketing administrations sell at 40 percent below market rates is simply just not true. Putting statements in the record saying that the Southeastern Market Administration failed to recover $1.5 billion of their costs, that is simply just not true.

I want to conclude with this: power sold by the Southeastern Administration SEPA is vitally important to my constituents, which does not include Hilton Head. I will oppose efforts represented by Mr. Franks to change the current cost-based rates formula for the PMAs, or to privatize PMAs. It is important to recognize—not to overlook—the multipurpose aspects of these water projects. Power is only one aspect of the Federal projects. Flood control, navigation,

water quality, recreation, fish, and wildlife purposes are other important uses.

Now Mr. Franks refers to the CBO study and points out things that he likes in the CBO study.

Mr. BARTON. Now, is there a question in this?

Mr. NORWOOD. No.

I didn't want the witness to leave. I would have nailed him if he would have stayed.

Mr. BARTON. Well, the gentleman has unanimous consent to put his statement in the record.

Mr. NORWOOD. Do I have consent to finish?

Mr. BARTON. Yes, you have 5 minutes.

Mr. NORWOOD. Well, let me just quote a couple of other things in that same CBO study. They say, ''Under certain circumstances, the Government could easily lose money by privatizing PMAs.'' Well, you can't privatize them without meeting those circumstances. It is very clear they would.

The CBO says, and I quote, ''Selling Federal power assets continues to raise concerns about future electricity prices, the environment, and access to recreational resources. Some power consumers would be likely to face increases in rates under new ownership.'' That is exactly what comes from the CBO. And that is exactly what his bill will do.

Now, I am done. I yield the floor.

Mr. BARTON. I thank the gentleman from Georgia, for his low-key, non-inflammatory, conciliatory statement.

Mr. NORWOOD. I was only being nice because Mr. Franks was not here to defend himself.

Mr. BARTON. Does the gentlelady from Missouri wish to ask the two members here any questions?

Ms. MCCARTHY. I don't.

Mr. BARTON. Does the gentleman from Tennessee wish to ask any questions of these two?

Mr. BRYANT. I would simply associate myself with my colleague's remarks from Georgia. He says it so eloquently. I would pass on the questioning of this panel. Thank you.

Mr. BARTON. Does the gentleman from Oklahoma wish to ask questions? Does the gentleman from Kentucky, Mr. Whitfield, wish to ask questions?

Mr. WHITFIELD. Mr. Chairman, I would just say that I was going to make a statement in defense of PMAs, but I think Mr. Norwood has said it all.

Mr. BARTON. All right. Does the gentleman from Mississippi, Mr. Pickering, wish to ask any questions of the two members here?

Mr. PICKERING. Mr. Chairman, at this time, no. Thank you.

Mr. BARTON. Okay. Before we go to the next panel, does Mr. Jenkins wish to make a brief statement? We give that opportunity, if you will make it very brief.

Mr. JENKINS. Thank you, Mr. Chairman. I appreciate the opportunity. I have refrained, since I have been on these sacred premises, from associating myself with the remarks of other folks. Sometimes that brings on more talk. But I would point out that the gentleman from Georgia, Mr. Norwood, has spoken the absolute truth

in every word he said, here. In that regard, I am associating myself with his remarks.

I would point out that, in order for the committee to really do the work that needs to be done and to look at this in the light in which it should be looked at, the claims that—and I heard this spoken—Federal money pays for low rates for other parts of the country. I don't know about all parts of the country, but I would say with respect to the TVA area, this committee should look to that statement, and ask any person who makes that statement to come forth and specify, exactly, what those sums are that are spent to lower rates in some parts of the country. I don't believe it is necessarily true.

I think, with respect to TVA especially, anybody should go back—this committee should go back—and study the 1959 amendments to the TVA Act, which basically made a self-financing company out of TVA. TVA has to go to the market to borrow money, just like anybody else.

Somebody might make the claim that they went to a Federal bank and borrowed some money. That is true. They were given permission last year to pay it off, because it was not a good deal. They could borrow money from other banks around the country and other places at a lower interest rate. They were able to do that.

Mr. BARTON. Could the gentleman summarize what he wants to say, fairly quickly?

Mr. JENKINS. Yes. I am sorry, Mr. Chairman. I started out to tell you what time it was and I am telling you how to make a watch here.

I appreciate the opportunity to comment thusly: I would ask the committee to look to these statements that are made, and verify the truthfulness of them, as they are made. Thank you.

Mr. BARTON. The gentleman from Illinois, Mr. Rush, we just missed the first member panel. Would you wish to make a brief statement before we go.

Mr. RUSH. No, Mr. Chairman. But I will ask unanimous consent to have an opening statement issued into the record.

Mr. BARTON. Without objection, so ordered.

We would now like to welcome our first panel of non-congressional members. If you folks would come forward?

We have Mr. Medford, who is the Executive Vice President for Customer Service for the Tennessee Valley Authority. We have Mr. William Coley, who is the Group President for Duke Power; Mr. Herman Morris, who is the President and CEO for Memphis Light, Gas and Water Division, and we have Mr. James Baker, who is the President of Middle Tennessee Electric Membership.

If you gentlemen would come forward, please? We would like to welcome you gentlemen to the subcommittee. Each of you has presented written testimony. It is in the record in its entirety. We are going to start with Mr. Medford and let you summarize your written statements for 5 minutes. We will go right down the line: Mr. Medford, Mr. Coley, Mr. Morris and Mr. Baker.

Again, the statements are in the record in their entirety. You are recognized for 5 minutes.

STATEMENTS OF MARK MEDFORD, EXECUTIVE VICE PRESIDENT, CUSTOMER SERVICE, TENNESSEE VALLEY AUTHORITY; WILLIAM A. COLEY, GROUP PRESIDENT, DUKE POWER, ON BEHALF OF TVA WATCH; HERMAN MORRIS, PRESIDENT AND CEO, MEMPHIS LIGHT, GAS AND WATER DIVISION; AND JAMES O. BAKER, PRESIDENT, MIDDLE TENNESSEE ELECTRIC MEMBERSHIP CORPORATION, ON BEHALF OF TENNESSEE VALLEY AUTHORITY PUBLIC POWER ASSOCIATION

Mr. MEDFORD. Good Morning, Mr. Chairman.

Mr. BARTON. You really need to pull that microphone closer to you.

Mr. MEDFORD. Mr. Chairman, is this on?

Mr. BARTON. Yes, sir.

Mr. MEDFORD. Good morning, Mr. Chairman and members of the subcommittee. My name is Mark Medford and I serve as the Tennessee Valley Authority's Executive Vice President of Customer Service and Marketing. I am also the executive officer responsible for industry restructuring.

I appreciate the opportunity to come before the Energy and Power subcommittee to discuss how TVA fits into the electric industry and our future role in a competitive, less-regulated environment.

TVA is the Nation's largest producer of public power. We serve 159 retail distributors and 68 directly served customers in parts of 7 Southeastern States: Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia. TVA has the statutory responsibility to provide for the economic development of the entire region. To do so, TVA manages the Tennessee River as a completely integrated system. By managing the river's resources in this way, TVA maximizes the benefits of flood control, navigation, and power generation, all of which are critical to our original mission.

TVA appreciates the subcommittee's leadership in addressing the significant disconnect that has developed between the Federal statutory scheme for the power industry and the power markets as they have moved quickly toward greater competition. Like you, we see the need for comprehensive Federal electric restructuring legislation.

As the result of market pressures, under TVA Chairman Craven Crowell's leadership, TVA began the difficult process of conforming itself into a competition-oriented business. This effort included painful staff reductions, cost containment, and significantly improving our productivity.

In 1997, TVA unveiled a comprehensive program to guide our agency for the next 10 years called the Ten Year Business Plan. The overriding goal of the plan is to ensure that TVA's total delivered cost of power will be competitive with the market price of power through the year 2007, and beyond. The primary means for accomplishing this is reducing the debt and lowering interests costs. In the first 2 years of the plan, I am pleased to report that TVA is already ahead of schedule and has reduced our debt by over $1 billion.

Mr. Chairman, less than 2 years ago, this subcommittee expressed concern about the lack of progress on a regional consensus for the future of TVA. We listened to the subcommittee, and we

have participated extensively in several initiatives to develop a reasonable consensus for the TVA region. We participated in the Department of Energy's TVA Advisory Committee, along with our customers, labor, environmentalists, TVA Watch, power marketers, and other stakeholder groups to ensure that the Tennessee Valley region, as a whole, is treated fairly in a more competitive environment.

DOE took the results of this regional effort and crafted a TVA title for inclusion in its comprehensive electricity competition plan, released by the administration on April 15 of this year. Furthermore, Members of Congress from the TVA region strongly encouraged us to work with TVPPA to develop a regional consensus on this issue. We jointly completed work on legislative language to reflect that consensus in March of this year.

Both titles reflect a great deal of hard work and hard compromise. However, TVA believes that they both define an appropriate role for TVA in a competitive environment, and that they are, in fact, quite similar. I am pleased to offer our support for the administration in this critical legislative initiative and to be here today with Jim Baker and Herman Morris to discuss proposed regional approaches.

Throughout the regional process of developing our proposal with TVPPA and working with the administration, TVA had three major goals. First, leave no customer behind. All customers in the TVA region benefit from the current structure of low-cost electricity and integrated river management. Any change to that structure should, likewise, benefit all customers. This is of particular concern to TVA, since we are a predominantly rural region.

Second, maintain TVA's Federal status, which enables the integrated river management that benefits not only the residents of the region, but also facilitates the low-cost movement of goods and commerce from other States.

Finally, ensure that the reliability of the regional power transmission grids are maintained and enhanced within a more competitive environment.

In conclusion, we believe both proposals accomplish all these fundamental goals. We look forward to working with this subcommittee to develop legislation that moves carefully toward a well-conceived plan to bring competition to the electric industry.

Once again, I want to thank you for the opportunity to discuss this very important issue with you today. I would be happy to answer any questions.

[The prepared statement of Mark Medford follows:]

PREPARED STATEMENT OF MARK MEDFORD, EXECUTIVE VICE PRESIDENT, CUSTOMER SERVICE, TENNESSEE VALLEY AUTHORITY

Mr. Chairman and Members of the subcommittee, thank you for this opportunity to explain how the Tennessee Valley Authority currently fits into the electric industry and how TVA can continue to serve the public interest in a competitive, less regulated environment. My name is Mark Medford and I serve as TVA's Executive Vice President for Customer Service and Marketing and the executive officer responsible for industry restructuring.

My responsibilities include working very closely with the 159 distributors of TVA electric power and 68 direct-served customers within the Tennessee Valley. These are the two groups who would be most directly affected by comprehensive restructuring legislation.

I am pleased to appear before the Energy and Power Subcommittee and greatly appreciate the opportunity to talk about TVA. Together with the Tennessee Valley Public Power Association, the trade association representing our distributors, I am pleased to discuss a constructive, regional approach for dealing with TVA in any legislation this Congress considers.

BACKGROUND ON TVA

The Tennessee Valley Authority is large and complex. TVA is not only the nation's largest producer of public power, but it also acts as a regional economic development agency and the steward of the Tennessee River basin. TVA was established by Congress in 1933, primarily to provide flood control, navigation, and electric power in the Tennessee Valley's seven state region. The TVA Act also directs its 3 member Board of Directors, all of whom are appointed by the President and confirmed in the Senate, to set the lowest possible electric rates that recover the full cost of providing electricity for the Valley. TVA is the leader within the Tennessee Valley for economic development, and a provider of low cost electricity and integrated resource management which cuts across state boundaries.

The Tennessee River is the fifth largest river system in the United States. It stretches 652 miles from Knoxville, Tennessee to Paducah, Kentucky, where it flows into the Ohio River and ultimately the Mississippi. It encompasses over 11,000 miles of shoreline, 54 dams and 14 locks. About 34,000 loaded barges travel the Tennessee River each year—the equivalent of two million trucks traveling the roads. Prior to the creation of TVA, the Tennessee River flooded on a regular basis, causing millions of dollars of damage per year. Under TVA's integrated resource management the Tennessee River is the only major river system in the United States which has not flooded, thus saving the region billions of dollars in damages.

TVA's power system has a dependable generating capacity of 28,417 MW. In 1998 TVA's generation was approximately 61% coal, 28% nuclear, and 11% hydropower. TVA provides wholesale power to its 159 local municipal and cooperative power distributors through a network of 17,000 miles of transmission lines in the seven state region. TVA also sells power directly to 68 large industrial and federal customers. Ultimately, TVA supplies the energy needs of nearly 8 million people every day over a power service area covering 80,000 square miles, including Tennessee, and parts of Mississippi, Alabama, Georgia, North Carolina, Virginia, and Kentucky.

The area in which TVA can provide electricity service is currently limited by law. Established by law in 1959, the TVA "fence" limits our service area to only those customers within the Tennessee Valley. Conversely, other utility companies are limited in their ability to compete to serve distributors inside the TVA region. As I will explain later, TVA worked closely within the Administration to develop an important regional consensus. The successful result was the TVA title in the Administration plan. This regional approach would allow outside companies to compete for customers throughout the TVA service area while allowing TVA limited rights to sell power outside its service territory.

Currently, the TVA power system is 100% self-financed through its power revenues. This year the Administration has requested $7 million in appropriations for TVA to continue management of The Land Between the Lakes, a beautiful 170,000 acre national recreation area bordering Kentucky and Tennessee. While LBL is not part of the power system, it is an integral part of TVA's ongoing statutory responsibility for unified regional, sustainable development that contributes to the regional economy and quality of life of the Tennessee Valley.

TVA'S RECENT ACHIEVEMENTS

Over the past five years TVA has worked very hard to improve all aspects of its operations. For example, TVA has:

- Reduced its debt by $1 billion and introduced a comprehensive Ten Year Financial Plan to ensure that TVA's power will remain competitive in the coming decade.
- Developed five nuclear units into an outstanding nuclear program and brought Watts Bar Nuclear Plant on line.
- Initiated refurbishment of coal and hydropower units to increase generation without building new plants.
- Enhanced a huge transmission system and maintained reliability of service even during last summer's heat wave.

TVA's Ten Year Business Plan was specifically designed to ensure that TVA will be ready for the new competitive marketplace of the future. Its overriding goal is to keep TVA's total delivered cost of power to a level consistent with the forecast of the future market price of power surrounding TVA's service territory while recovering the cost of power from electricity consumers. The primary means for accom-

plishing this is reducing debt and lowering interest costs. Over the course of the Ten Year Plan, TVA plans to cut its debt by half, although this debt reduction schedule may be changed depending on future market conditions. TVA will remain competitive within the electric utility marketplace, and TVA's debt will continue to decline, so long as we adhere to this sound financial strategy and we are treated fairly in restructuring legislation.

TVA AND ELECTRIC INDUSTRY RESTRUCTURING

TVA is prepared to assist this Subcommittee as you tackle the complex and challenging issues associated with restructuring the electric industry. TVA also appreciates the Administration's initiative in addressing the difficult issue of the role of public power in its proposed restructuring bill. Public power represents 25% of the electricity market and has historically filled an important role in ensuring that affordable power is available to all consumers.

As we all know, TVA is a federal agency. Despite the most sincere efforts by the Tennessee Valley region, only a federal bill, fashioned by the leadership of this Committee, can give the states in the Tennessee Valley the tools needed to bring about the kinds of changes to the electricity marketplace envisioned by states in other regions of the country.

In general, TVA supports legislation that affirms the role of TVA as a regional agency for integrated resource management and economic development; ensures the availability of affordable electricity for rural and fixed income consumers in the Tennessee Valley; and ensures the continued reliability of the power supply and the transmission system. We also believe strongly that TVA must only be dealt with as part of the comprehensive package of issues determined by Congress to be appropriate federal jurisdiction within this important debate.

We are pleased to share with you the regional approach we have developed with our distributors. In addition, the Administration has taken an extensive look at the issues surrounding TVA.

In the fall of 1997, the Department of Energy created the "Tennessee Valley Electric System Advisory Committee." The purpose of that task force was to develop, as much as possible, a consensus among regional stakeholders for a legislative proposal to define the role of TVA in a restructured competitive electric industry. In addition to TVA, the participants included: the Tennessee Valley Public Power Association representing distributors, the Tennessee Valley Industrial Customers representing large industrial customers directly served by TVA, Associated Valley Industries representing industrial customers served by the distributors, the Southern States Energy Board, the Tennessee Valley Energy Reform Coalition representing local environmental interests, the Rural Legal Services of Tennessee representing the interests of rural consumers, the League of Women Voters Natural Resources Chair in Knox County, the International Brotherhood of Electrical Workers, and the International Brotherhood of Teamsters. As national energy stakeholders, ENRON, TVA Watch, and the Electric Clearinghouse also participated.

Last March, the task force submitted its final report. Relying on the report and working with the various stakeholders, the Department of Energy crafted a "TVA title" for inclusion in its Comprehensive Electricity Competition Plan, released on April 15 of this year. Consequently, although the title reflects hard work and compromises, the "TVA title" in the Administration plan is the product of a regional consensus and creates an appropriate role for TVA in a competitive environment. TVA supports this title in the Administration's bill and greatly appreciates DOE's impressive effort.

ADMINISTRATION TITLE

The TVA title of the Administration's proposal affirms TVA's continued role within the Valley managing the river system and providing electricity primarily for Valley residents. It also imposes new limitations on TVA, such as:

- For the first time, subjects TVA to antitrust prohibitions.
- For the first time, subjects TVA transmission rates to FERC jurisdiction.
- Requires TVA—unlike other utilities in the country—to re-negotiate existing full-requirement contracts with distributors within one year of enactment, and gives FERC authority to settle disputes.

Early this spring, members of Congress from the TVA region strongly urged TVA to work directly with the Tennessee Valley Public Power Association, which represents TVA's 159 distributors, to put the final touches on a regional solution for inclusion in restructuring legislation which will be considered by Congress. As a result, in March, TVA and TVPPA developed legislative language for a "TVA Title."

From TVA's perspective, the Administration's proposal and the TVPPA proposal are very similar in critical ways. The most important characteristic is that they both represent a regional consensus and regional compromises. Since many of you are already familiar with the Administration's plan, I would like to briefly discuss 5 areas of similarity. (Also, attached is a chart comparing the TVA title in the Administration plan with the TVPPA proposal.)

1. Equitable Competition

- TVA transmission rates, terms and conditions would be subject to regulation by the Federal Energy Regulatory Commission.
- Limitations on fair competition, such as the TVA "Fence" and "Anti-Cherry Picking amendment would be removed simultaneously on the effective date of federal legislation.

2. TVA Power Sales

- TVA's sales of electricity outside of the existing service area would be limited in two ways. First, TVA would be limited to wholesale sales—no retail sales, and second, these sales would be limited to electricity that is *surplus* to the demand of its customers in the TVA service area.
- TVA would be permitted to sell to new retail customers inside the TVA service area but only under circumstances agreed to by the power distributors.
- TVA would not offer long-term contracts for firm wholesale energy sales to customers outside the service area at rates more favorable than those offered to distributors unless power distributors agree.

3. Stranded Investment Recovery

- TVA and the distributors would negotiate the amount of stranded investment due as a result of the move to open markets. In the event TVA and distributors cannot agree on stranded investment, FERC would decide the issue.
- FERC would review and approve the stranded investment recovery plan, or reconcile the TVA/distributors differences if a joint plan is not submitted.
- TVA would not collect stranded investment after September 30, 2007.
- TVA would use any funds recovered to repay debt consistent with TVA's 10-Year Plan objectives.

4. Antitrust Coverage

- TVA would be subject to the injunctive relief and criminal penalties—but not the civil damage provisions—of the anti-trust laws of the United States. This exclusion from civil damage liability is comparable to the anti-trust standards generally applied to governmental entities.

5. Renegotiation of Wholesale Power Contracts

- TVA and the distributors would renegotiate their existing power contracts within one year of enactment of comprehensive energy legislation.
- If TVA and a distributor cannot reach agreement on new contract terms—and if FERC has approved TVA's stranded investment recovery with respect to that distributor—the distributor could terminate its existing contract upon three years notice from the date of the FERC order.

TVA has been working with our customers to provide them with greater contract flexibility in anticipation of a more open and competitive marketplace. Even more importantly, TVA has further demonstrated our willingness to re-negotiate these contracts yet again as part of this regional consensus approach. As far as I know, this is the only example to date where a party to a contract advantageous to that party willingly agrees to legislation requiring re-negotiation of that contract.

CONCLUSION

TVA is working hard to prepare for competition by reducing our debt, keeping our electric rates low, and efficiently managing the Tennessee Valley's integrated resource system.

We have worked with many stakeholders, especially TVPPA, to develop a regional approach to restructuring. TVA is committed to work with this Committee and with other TVA stakeholders to ensure a regional solution that brings the benefits of competition to the Tennessee River Valley.

Thank you for the opportunity to testify before this committee. TVA is eager to contribute to efforts to include a regional consensus as part of any federal legislation Congress undertakes in the future.

Mr. BARTON. Thank you, Mr. Medford.

We would now like to hear from Mr.—is it "Co-lee," or "Coo-lee"?

Mr. COLEY. "Co-lee."
Mr. BARTON. "Co-lee."
Mr. COLEY. "Coley," that is correct.
Mr. BARTON. Your statement is in the record. We will recognize you for 5 minutes to summarize.

STATEMENT OF WILLIAM A. COLEY

Mr. COLEY. Thank you Mr. Chairman, and members of the panel. I appreciate your inviting me here to testify today. My name is Bill Coley and I am president of Duke Power Company, and I am testifying on behalf of TVA Watch.

TVA Watch is a group of six investor-owned utilities adjacent to, or near, the TVA service area. TVA Watch was formed in late 1995, based on concerns that TVA was illegally selling power outside of its statutorily defined territory, commonly known as the "fence," and because of a number of statements made by TVA that it wanted to become "America's power company," and compete nationwide. Those statements reminded many of us in the surrounding areas of TVA's unbridled competition, prior to 1959.

In fact, TVA Watch members have been forced to take TVA to court on three occasions since 1995. All cases involve TVA's power sales outside the fence, in violation of the congressionally imposed boundary. In 1996, the Federal Court found that TVA was selling power outside its legal territory in violation. One year later, TVA was again caught illegally selling power outside the fence, and promptly settled a second lawsuit we had filed. The third case is ongoing. TVA is fighting hard for the right to capture customers already served by others. We were forced to take these actions to court because TVA is not accountable to any regulatory body; neither to FERC nor any State public service commission. Our only recourse has been, and remains, litigation.

In 1959, investor-owned utilities found they could not compete against a Federal corporation which didn't pay taxes; was not subject to the same regulatory bodies; was immune from anti-trust laws, and was the beneficiary of many other subsidies because of it was a Government entity. We do not fear competition. We have been competing vigorously in the wholesale market in all of our companies. But we are justifiably fearful of unfair competition from our own Government. Mr. Chairman, I would submit that if the U.S. Air Force were to announce a new commercial passenger shuttle between Washington and New York, American Airlines, U.S. Airways, and others would voice similar concerns.

Admirably, TVA has embarked on a 10-year plan to cut its $27 billion of debt and improve its poor financial situation. All of our companies would have, at best, very poor ratings by credit analysts with a similar debt load. But in recent reviews by agencies, TVA was given a AAA credit rating, which is another tangible example of TVA's competitive advantage as a Government utility. No investor-owned utility in the United States has a AAA credit rating.

We emphatically believe that the fence should remain intact. However, should the fence be, as TVA states, preordained to come down, then we believe it imperative that Congress replace it with mechanisms that allow for fair competition between suppliers, and foster competitive benefits for consumers. Congress must also rec-

ognize the need to protect Valley ratepayers, and perhaps most importantly, all taxpayers.

First, TVA should be covered by full FERC regulations, including rate regulation. Second, TVA's immunity from anti-trust laws should be removed, so that TVA would be constrained to act as an equal market participant. Third, TVA's ability to build or acquire new generation should be controlled. Its appetite for unneeded generating plants some years ago greatly added to its massive debt. Fourth, TVA should either be required to pay taxes as we do, or its payment in lieu of taxes should be expanded to include the full burden of local, State and Federal taxes. There are several other advantages which TVA enjoys, which should also be addressed. They are included in my written testimony.

Mr. Chairman, in summary, the more things change; the more they stay the same. The debate over TVA today is amazingly similar to that of 40 years ago. As this committee deliberates restructuring, it must determine the appropriate role of TVA.

I conclude with a statement from one of the authors of the fence provisions of 1959, Senator Jennings Randolph. "At some time in the future, when memories have dimmed and new faces have come upon the scene, the purpose of the prohibition against TVA supplying power outside of the fence might be forgotten." Mr. Chairman, we hope that our concerns, and that the history of the fence, will not be forgotten.

Again, I appreciate being here and am happy to welcome your questions.

[The prepared statement of William A. Coley follows:]

PREPARED STATEMENT OF WILLIAM A. COLEY, PRESIDENT, DUKE POWER AND CO-CHAIRMAN, TVA WATCH

INTRODUCTION

Mr. Chairman and Members of the Committee: my name is Bill Coley and I am President of Duke Power. I am here today as Co-chairman of TVA Watch, a coalition of shareholder-owned utilities that was formed to serve two public policy functions: First, to ensure that TVA complies with the TVA Act. Second, to promote policy discussion regarding the proper role of TVA in a competitive marketplace. In addition, TVA Watch supports efforts to bring meaningful reform to TVA as America's electric power industry evolves into a more competitive market. Other members of TVA Watch include American Electric Power, Entergy Corporation, Illinova Corporation, LG&E/Kentucky Utilities, and SCANA Corporation.

To set the stage for my testimony, I'd like to refer to a statement made 40 years ago by Senator Jennings Randolph of West Virginia, one of the authors of the 1959 of the law that placed a "fence" around TVA electricity operations that remains to this day. Senator Randolph said that "at some time in the future, when memories have dimmed and new faces have come upon the scene," the purpose of the prohibition against TVA supplying power outside the "fence" might be forgotten.

Mr. Chairman, Senator Randolph hit the nail on the proverbial head. The issues that led to Senator Randolph making that statement are as valid today as they were 40 years ago. In fact, as the electric power industry becomes more subject to market, rather than regulatory, discipline, I urge you to remain alert to the problem that led to the creation of the "fence." The problem was unfair competition by the federal government. If the "fence" is to be removed so that TVA can compete in an open market, then the law that created the "fence" must be replaced with a new law that will assure fair competition. Put another way, failure to deal with the competitive fairness issues that led to the "fence" being created in the first place will only compromise the objective of encouraging true efficiency in America's electric power industry in a competitive market.

I believe all of us support the proposition that competition is good for consumers. I think we also can agree that consumers (at both wholesale and, where permitted by individual states, retail levels) are best served when they can choose among the

widest range of providers who compete under the same rules. However, it isn't enough for all of us to recite the competition mantra without dealing forthrightly with the issues of how TVA is to operate if it is to enter a competitive market. We believe that TVA has a place in the future of our industry. However, there are some very fundamental issues that must be dealt with if TVA's role is to be that of a competitive power supplier. I want to emphasize that my company and others in TVA Watch have worked with TVA over the years under a provision of the 1959 law that allows our power grids to be interconnected for purposes of maintaining reliability. When we agree with TVA, we work well together. When we disagree with TVA, we do so in the spirit of constructive debate. That is how we approach this hearing today. We seek to be constructive, yet forthright.

TVA is not just another government agency. Nor is TVA just another public power utility. TVA is completely and undeniably unique. It is a corporate entity created by the government, with bonds issued to the public, that engages on both purely public functions (such as flood control) and purely commercial functions (such as electricity generation and supply). By some measures, it is the largest electric supplier in the country. It is an agency like no other. In the Tennessee Valley, it is the retail rate regulator, the wholesale supplier, the leading environmental agency and the dominant producer of power in its seven-state region. No other entity in the country even comes close to having this type of authority or license. If Congress is to enact legislation that will fundamentally change the relationship we've had with TVA, then the issue of how TVA is to function in a changing market must be confronted and resolved to protect the public interest and further the objective of open and fair competition. TVA Watch believes it is entirely possible to resolve these issues and is prepared to work constructively with Congress to do so.

HISTORY OF THE FENCE

The fact that TVA has such powerful tools while other utilities do not is the very reason Congress took action to limit TVA's reach by creating the "fence." These tools were provided to TVA so that it could issue revenue bonds to finance the expansion of its power program without having to come to Congress for appropriations to finance the program's growth. Congress deliberated four years between 1955 and 1959 before agreeing to provide TVA with these extraordinary powers, but with the proviso that TVA confine its power operations within what we call the "fence." Congress created the "fence" around TVA to "protect surrounding utilities from competition with the public power authority," out of a justified concern that TVA would have a governmentally-conferred competitive advantage and be able to siphon off customers who could be otherwise served by private enterprise. Without the fence, TVA would be able to gain market share not by virtue of its being the most efficient supplier, but because it could undercut the market based upon its governmentally-granted benefits.

This concern is especially valid today because of recent statements by the leadership of TVA that the issue of whether the "fence" will come down is "preordained" and that TVA "intends to be one of the successful few" utilities in a changing market.

TVA IS TRYING TO DESTROY THE FENCE

These statements have been followed by specific deeds. During the past four years, TVA has been carrying out a strategy to undermine and eliminate the "fence." For example:

- In April 1995, TVA released a study stating that TVA is ready for competition.
- In October 1995, TVA renewed its efforts to take over the Southeastern Power Administration assets on the Cumberland River.
- In 1995, TVA began to advertise outside its service territory.
- In August 1996, as a result of a lawsuit filed by several subsidiaries of Southern Company, a Federal judge ruled that TVA improperly stepped outside the Fence when it sold power to a power marketer, a ruling which TVA did not appeal.
- In November 1996, Kentucky Utilities filed an action before the Virginia Corporation Commission (VCC) alleging that one of TVA's distributors, Powell Valley Electric Cooperative, violated state law by making and performing a contract for the sale and delivery of TVA-produced power outside the "fence." Last month, the VCC ruled the transaction violated state law. An appeal is pending.
- In April 1997, Duke Power and several other members of TVA Watch filed suit in Federal court, alleging TVA was selling power outside its congressionally-mandated territory. These transactions made it nearly impossible for buyers in the market to identify TVA as the actual source of power or to avoid unwittingly purchasing TVA's power. TVA ultimately agreed to settle this suit and

stop its sham transactions on terms satisfactory to our member companies. TVA's compliance with its settlement obligations remains subject to the continuing jurisdiction of a federal court in Alabama.

We believe the experiences of the past few years justify continued vigilance over TVA's activities.

Clearly, if the "fence" is removed without addressing the unique and powerful advantages that TVA already has, it will continue to receive billions of dollars in direct and indirect federal benefits, and inhibit efficient competition by selling outside of its congressionally-mandated "fence." By doing so, TVA will have ignored the General Accounting Office warnings that the "fence" may actually provide TVA with protection from the significant risks that competition could hold for TVA. Congress should not permit TVA to dismantle the "fence."

THERE MUST BE A LEVEL PLAYING FIELD

TVA Watch believes that issues surrounding the Tennessee Valley Authority—its huge debt, substantial subsidies, exemption from basic laws, artificial competitive advantages, and its lack of accountability—must be addressed before the "fence" can come down so that TVA can compete with private enterprise. Failure to address these many issues will undermine the primary goal Congress and State legislators seek, namely fair and efficient competition.

TVA Watch believes the following ground rules that apply to TVA's competitors must apply to TVA itself:

1. Anti-trust laws that apply to private-sector utilities must apply with the same force and effect to TVA.
2. TVA must come under the jurisdiction of the Federal Energy Regulatory Commission (FERC) to the same degree as other utilities. This includes regulation not only of TVA's transmission system, but its power sales practices.
3. TVA must not be allowed to build new or expanded generation resources with the wide range of subsidies that are denied other utilities.
4. TVA must bear the same federal, state and local tax burdens as other utilities.
5. TVA should not have preferential access to power from other federal facilities at rates below fair market value.
6. TVA's exemption from open access transmission system requirements should be repealed.
7. TVA's exemption from nuclear decommissioning rules must be eliminated.

We do not believe it is sufficient for Congress to pick and choose among this list. We've been asked on several occasions which of these rules are more important than others. Our response is that is the wrong question. The right question to ask is whether or not we are going to have competition where everyone competes under the same rules. Our position is that if TVA doesn't want to play ball under the same rules as everyone else, they should not be allowed into the competitive supply game.

THE CLINTON ADMINISTRATION PROPOSAL

In this regard, TVA Watch has serious concerns about a provision in the proposed electricity restructuring legislation recently released by the Clinton Administration that deals with TVA. While the overall goal of the Administration's bill to encourage more competition is a worthy one, the bill falls far short of providing adequate measures to safeguard U.S. taxpayers, electricity consumers and electricity providers against unfair competition from TVA.

The Administration's bill, to be frank, would create a special set of rules for TVA while requiring other utilities to operate under more stringent rules. The Administration's bill would permit TVA to issue more debt to build and operate facilities anywhere with only superficial changes in the rules that currently govern TVA. U.S. taxpayers would be placed at greater risk for any TVA business activity and consumers would be denied the benefits of fair competition.

Among the inadequacies in the Administration's bill:

- The only limit on TVA's ability to expand its generation portfolio provided by the Administration's bill is that TVA could not use any funds recovered for stranded costs to finance the expansion. While this limit on the use of stranded cost recovery is useful, it is inadequate because TVA would still have other advantages that are not available to its potential competitors.
- The bill calls for TVA to be subject to only selected provisions of some anti-trust laws. However, this provision is virtually meaningless because TVA would be exempt from any damage liability for any anti-competitive acts. TVA Watch maintains that anti-trust laws must apply to TVA with the same force and effect as other commercial firms. If TVA wants to compete, it must do so under the same anti-trust ground rules with adequate deterrent mechanisms.

- Although the Administration's bill provides for regulation of TVA's transmission system by the Federal Energy Regulatory Commission (FERC), it does not provide for regulation of TVA's sales practices and rates by FERC. What this means, among other things, is that while TVA's transmission system would be open to all suppliers, TVA could price its power and access to its transmission system without the FERC review that applies to other utilities. TVA also would be guaranteed recovery of all stranded costs (regardless of reasonableness) and would be exempt from any FERC initiative to promote regional transmission organizations or to investigate abusive practices. TVA Watch maintains that TVA must be regulated just like other public utilities if the "fence" is to be removed.
- The Administration's bill is silent on other steps needed to ensure fairness and prevent economic distortions if the "fence" is to be removed. These steps include (1) elimination of TVA's exemption from nuclear decommissioning laws, (2) requiring TVA to pay for power from other federal facilities at fair market rates, and (3) requiring TVA to pay all federal, state and local taxes at rates comparable to those paid by TVA's potential competitors.

According to a 1995 study by Putnam, Hayes & Bartlett, these advantages provided by the federal government to TVA cost U.S. taxpayers more than $1.2 billion per year. Even with these subsidies in a service area closed to competition, TVA has amassed a long-term debt of more than $27 billion. This debt, ultimately an obligation to be borne by U.S. taxpayers in the event of a TVA default, likely could increase if TVA is permitted to amass more debt to expand its business beyond the "fence."

In short, TVA Watch believes TVA must not be allowed to compete outside the "fence" unless (1) TVA is positioned to function without federal subsidies and (2) the protections enacted in 1959 are replaced with new rules that will assure fair competition among all providers. The Administration's bill is completely inadequate on both counts.

In defending its proposal to remove the "fence," the Administration says that if TVA's current customers are to have new options that may result in TVA losing business, then TVA should be able to compete outside the "fence" to replace that lost load. While that rationale may seem logical, it ignores the larger question of why TVA should operate under its own lenient rules while other competitors must function under more stringent rules. There is an implied assumption in the Administration's proposal that could be stated in the following way: TVA's customers want new options. This means TVA has to compete against other utilities. However, TVA can't succeed in direct competition against other utilities because it lacks the financial strength to do so. Therefore, a special set of rules with light-handed regulatory treatment must be created to "balance out" TVA's financial impairments so that it will have a better chance to compete.

Mr. Chairman, even if the Administration denies that is the case, the fact remains that if their bill were to become law, TVA would have advantages that would not be available to its potential competitors. It's rather like allowing the U.S. Air Force to get into the air passenger business against commercial airlines. We submit that creating a special set of rules to prop up a financially-impaired TVA as it tries to compete is absolutely contrary to established economic thought and harmful to the public interest. The public interest is served by setting the right priorities. TVA should get its financial house in order first. Then, and only then, should TVA be allowed to compete under the same rules as everyone else.

TVA'S HUGE LONG-TERM DEBT

TVA has a long way to go to get its house in order. Even though TVA has its advantages in an 80,000 square mile area closed to competition, it nonetheless has amassed a debt of more than $27 billion dollars. TVA has said it is trying to reduce that debt. Two years ago, TVA unveiled a ten-year plan to cut its debt in half by 2007. Yet, the General Accounting Office (GAO) recently released a study showing that TVA likely will not meet its debt reduction targets within its originally announced schedule. What this means is that Congress should not rest easy because TVA has promised not to go deeper in debt. In fact, TVA is currently entering into a series of deals in which, without borrowing money, it commits the authority to long-term purchases of power—as long as thirty years—from private parties. These new TVA obligations, made by a federal corporation, should be viewed for what they are—an indirect means for TVA to get around its $30 billion Congressional bond cap. By essentially paying others to build these new plants, but agreeing to buy all the plants' output at specific rates over a long period of time, TVA is essentially underwriting the debt and is on the hook if its decisions turn out to be wrong.

TVA'S BONDS HAVE THE IMPLICIT BACKING OF THE FEDERAL GOVERNMENT

You may ask how TVA is able to continue to issue bonds, and to continue to carry such massive debt on its books year after year without raising rates, and without defaulting on its debts. The reason is simple: TVA is an arm of the United States government, a Federal Corporation. As such, according to Standard and Poor's and other bond-rating services, its bonds carry the implicit guarantee that the United States will bail out TVA should it not be able to repay its debt, much as the government bailed out the savings and loan industry. Because TVA is not subjected to any meaningful outside oversight, it is much more free from the accountability shareholder-owned utilities must demonstrate.

For example, TVA is not required to abide strictly by the generally accepted accounting principles utilized by virtually all American businesses. In effect, there is no existing legislative authority requiring TVA to do so. In fact, there currently is no method even to meaningfully compare TVA's financial position to that of shareholder-owned utilities, except by using the data TVA chooses to make public. Regulation of TVA by FERC to the same extent other utilities are regulated would go a long way in rectifying this.

TVA ENJOYS NUMEROUS SUBSIDIES

The analysis by Putnam Hayes & Bartlett has quantified those advantages at more than $1.2 billion a year. These advantages include exemption from Federal and state income taxes, exemption from State and local ad valorem and other taxes, the purchase of federal preference power at subsidized rates, and lower financing costs because its bonds are partially tax exempt. The executive summary of the study is attached to my statement and a copy of the full study has been provided to the Committee.

TVA's "payments in lieu" of taxes do not even begin to reach the amounts of taxes paid each year by shareholder-owned utilities. I understand that TVA officials claim otherwise and insist that certain tax breaks enjoyed by shareholder-owned utilities are somehow equal to, or even greater than, the subsidies TVA enjoys. This is an apples-to-oranges comparison of the worst sort. Without getting into a numbers game or confusing statistics, I would like to make four quick points regarding taxes. First, all of the tax provisions cited by TVA are available to every corporation in America—all you have to do is pay taxes. Second, the tax provisions merely determine when the tax is paid—not whether it's paid. Third, because shareholder-owned utilities are regulated, it is the customer—not the utility taxpayer—who benefits from these tax provisions. Fourth, the disparity between TVA's payments in lieu of taxes and the tax burdens of investor-owned utilities is glaring. For example, in 1998, TVA's gross revenues were $6.7 billion, but their tax expenditures were only $264 million. In contrast, Duke Power Company's gross revenues were $4.5 billion, yet our total federal, state and local tax bill was $854 million. Any claim by TVA that their payments in lieu of taxes are somehow "equivalent" to what is paid by a private sector company simply does not hold up under examination.

TVA IS EXEMPT FROM FEDERAL AND STATE REGULATION

In addition to the myriad financial subsidies it enjoys, TVA is, in essence, "self regulated." It is not subject to regulatory oversight, either by State regulatory authorities, or by the Federal Energy Regulatory Commission (FERC). Its rates and capital investments are left entirely to TVA's discretion and are immune even from challenges in federal court. As I have mentioned before, this has resulted in TVA incurring almost $27 billion of debt.

But let me focus for a minute on FERC, since it is clearly in the jurisdiction of this Committee. TVA is substantially exempt from regulation under the Federal Power Act. Neither TVA's wholesale power rates nor its transmission service rates are regulated by FERC. At a minimum, TVA should be subject to the same FERC regulation as are its shareholder-owned neighbors. As it now stands, TVA is accountable only to its three-member board while other market participants have to answer to independent federal and state regulators.

One glaring example of TVA's favored status is that it is not required to file open access transmission tariffs at FERC as are all shareholder-owned utilities. The purpose of those tariffs is to guarantee that any power market participant can gain non-discriminatory access easily and quickly to transmission services from jurisdictional utilities. Public power utilities such as TVA are not required to make such filings because the Commission does not regulate them.

Although FERC has attempted to impose reciprocity requirements on TVA, if a power seller seeks to move power across TVA, TVA's compliance is frequently ob-

tained only by the seller requesting an order from FERC, which can slow a transaction by months, or even eliminate it. TVA's voluntary transmission "guidelines," for example, are, for the most part, "window dressing" which appear to be intended as much to persuade policymakers and the public that TVA will play by the same competitive rules that other utilities must obey, as to provide transmission access.

Below is a list of FERC provisions that shareholder-owned utilities must comply with, but TVA does not.

- License required to operate hydroelectric power generation facilities. (16 USC 800).
- Conditions on licenses, restrictions on modification, and controls on maintenance. (16 USC 803).
- Determination of cost of projects constructed under license. (18 CFR 4.1-4.7).
- Rules and regulations concerning applications for permits, licenses, exemptions, etc. (18 CFR 4.30-4.84).
- Utilities required to petition to amend license. (18 CFR 4,200).
- Assessment of license fees against utilities. (18 CFR 4-300-4.305).
- Regulation of minimum recreational opportunities at licensed hydroelectric projects. (18 CFR 1 to 8.11).
- Restrictions on license transfer and lease of project property. (18 CFR 9.1-9.3).
- Annual charges imposed on utilities operating hydroelectric facilities. (18 CFR 11.1 to 11.21).
- Safety regulation of water power projects and project works. (I 8 CFR 12.1 to 12.44).
- Requirement of utilities to interconnect facilities and to coordinate operations. (16 USC 824a).
- Requirement to seek pre-approval for utility disposition of property or purchase of securities. (16 USC 824b).
- Federal regulation of utility issuance of securities and assumption of liabilities. (16 USC 824c). Regulation and control of rates for sale of power at wholesale. (16 USC 824d).
- Authority of Federal Energy Regulatory Commission to fix rates and charges and to prevent imposition of unjust or preferential rates. (16 USC 824e).
- Duty of utilities to furnish service. (16 USC 824f).
- Regulatory ascertainment of cost of utility property, investigations, requests for inventory and cost statements. (16 USC 824g).
- Federal authority to require utilities to interconnect facilities.(16 USC 824i).
- Federal authority to require utilities to provide transmission service. (16 USC 824j-824k).
- Duty of utilities to keep and maintain accounts and records. (I 6 USC 825).
- Regulators' authority to determine and set appropriate depreciation schedules. (16 USC 625b).

Congress must fix this imbalance if the "fence" is to be eliminated.

If Congress enacts new electricity legislation, it must extend FERC's authority to regulate TVA in the same manner it regulates other utilities. We certainly have no disagreement with FERC Chairman James Hoecker, who testified before this subcommittee on April 22 about the need for authority to regulate TVA.

In addition to not being subject to FERC rate rules, TVA avoids payments to FERC and the costs of securing FERC licenses for its hydroelectric projects. Shareholder-owned utilities, on the other hand, pay FERC millions of dollars for the privilege of being regulated. In addition, shareholder-owned utilities spend millions of dollars—not to mention upwards of seven years—to obtain FERC licenses for hydro projects.

TVA IS EXEMPT FROM ANTI-TRUST LAWS

Another key area that Congress must deal with is anti-trust laws. I cannot emphasize strongly enough that if TVA is not subject to basic rules that govern all other competitors, that exemption, coupled with its total discretion in rate-making, give TVA the power to "control the market" by engaging in predatory pricing or other anti-competitive activity.

TVA is in a commercial enterprise— the supply of electric power. There is no doubt that the activities of private sector companies in the commercial business of supplying electric power are subject to the antitrust laws. This means that power suppliers, such as Duke Power and the other members of TVA Watch, all are subject to lawsuits by private parties and by the government for violations of the various antitrust laws, such as the Sherman Act, the Clayton Act and the Federal Trade Commission Act. For example, if a public utility were to supply power to somebody on the condition that the customer agree not to compete with that utility, the De-

partment of Justice would probably file an antitrust lawsuit against that utility seeking treble damages and other penalties.

TVA, however, operates under a different set of rules. In response to calls that it be made subject to the antitrust laws and to treble damages for violations of those laws, TVA offers two general responses, both of which are inadequate. First, TVA claims that it is incapable of competing on an unfair basis because it was created solely to promote "governmental" and "public" purposes. Second, TVA claims that the antitrust laws are directed to eliminating the concentration of economic power in the hands of those who serve only their own profit-making interests, and because TVA is not operated on a "for profit" basis, it should remain exempt from the antitrust laws. Both of these arguments are easily dismissed.

TVA's power program—its sale and transmission of power at retail and at wholesale—is a commercial enterprise. What this means is that TVA, in reality, is in the commercial business of selling electricity. Moreover, the absence of a "profit motive" is hardly grounds for immunity from antitrust laws. The antitrust laws contain no such "non-profit" exemption.

The Supreme Court has long-recognized that the profit motive is not the only reason why the centralization of economic power is properly subject to antitrust laws. The Supreme Court has also recognized that the instinct of government to survive and thrive in a competitive environmental also can lead to anti-competitive behavior. In the landmark case of City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 408 (1978), the Supreme Court has noted that public corporations, such as TVA, are fully capable of competitive mischief:

> "...the economic choices made by public corporations in the conduct of their business affairs, designed as they are to assure maximum benefits for the community constituency, are not inherently more likely to comport with the broader interests of national economic well-being than are those of private corporations acting in furtherance of the interests of the organization and its shareholders...When [government] acts as owners and providers of services, they are fully capable of aggrandizing other economic units with which they interrelate, with the potential of serious distortion of the rational and efficient allocation of resources, and the efficiency of free markets which the regime of competition embodied in the antitrust laws is thought to engender."

The Administration's proposal to subject TVA to only certain antitrust laws without penalties simply does not serve the public interests because there will be no deterrent. It's rather like having a law saying that drunken driving is bad, but not having any penalties to go with the law. If persons harmed by anti-competitive conduct by TVA only have the redress offered by the Administration—injunction available only on a prospective basis—then TVA may as well remain immune from the antitrust laws. This is because antitrust litigation is time consuming and expensive. If the remedy at the end of the proceeding is a slap on the hand, then no rational person would ever initiate the process. There must be a deterrent to keep TVA from committing anti-competitive acts in the first place. That deterrent can only come in the form of making TVA pay damages for the competitive injuries that result from violations of the antitrust laws. If TVA claims that it, a billion dollar commercial enterprise, can't afford to pay antitrust damages, we have one simple response: If you can't do the time, don't do the crime.

CONCLUSION

TVA Watch encourages this Committee, and indeed all of Congress, to consider carefully the ramifications on TVA's original mission, and the significant effects on the nation's debt and taxpayer's pockets, of enacting legislation allowing such competition from a taxpayer-supported Federal utility.

TVA Watch supports efficient competition that is not skewed by allowing TVA to escape legal or regulatory burdens shareholder-owned utilities must bear. Many of the states that are moving forward on competition are largely ignoring the potential difficulties inherent in competition between private and government-supported entities because in most cases they have no jurisdictional authority to deal with these entities. This disparate treatment between public and private entities supplying electricity will distort competition. The states and Congress must find a remedy to allow competition to flourish. This can only occur if all competitors—regardless of ownership—are competing fairly against each other.

We at TVA Watch are committed to working not only with this Committee, but with all others who are genuinely interested in reforming TVA. The plain language of the TVA Bond Act remains and its purpose has not been lost. TVA Watch hopes that this Committee, and Congress as a whole, will remind TVA that the clear statutory mandate of Congress is not a dim memory.

Mr. BARTON. Thank you, Mr. Coley.

The Chair is going to recognize Mr. Bryant to introduce Mr. Morris to the subcommittee in a little more detail.

Mr. BRYANT. Thank you, Mr. Chairman. I appreciate that very much. I did want to specifically welcome Mr. Morris as a witness today. I am actually substituting for Congressman Ford, who was supposed to be here to introduce you. Congressman Ford and I, and Congressman Tanner, actually share you, so I will gladly step in for Congressman Ford.

Mr. Morris is the president and CEO of Memphis, Light, Gas and Water. That is one of the largest municipal resource facilities in the country. He presides over 2,700 employees, and a $1.1 billion budget. He is a very distinguished, very qualified witness to come in and testify. I think he has much to offer to this committee and those here today. I would simply welcome him on behalf of the Tennessee Delegation, and yield back my time.

Mr. BARTON. Thank you, Mr. Bryant. Before we recognize Mr. Morris, my question would be is Elvis still paying his light bill?

Mr. MORRIS. Elvis has been current and stays current, and is very actively involved in our local economy.

Mr. BARTON. Good. Gentlemen. Mr. Morris, your statement is in the record. You are recognized for 5 minutes to summarize it.

STATEMENT OF HERMAN MORRIS

Mr. MORRIS. Thank you, Mr. Chairman and members of the subcommittee. My name is Herman Morris. As you have heard, I am president and CEO of Memphis Light, Gas and Water Municipal Utility, serving the city of Memphis, in Shelby County, Tennessee.

I am here today on behalf of Memphis' and Knoxville's utility boards. I want to thank the members of the subcommittee for giving us the opportunity to present our views on electricity competition and the role of Federal electric utilities. We would also like to thank Congressman Ed Bryant and Congressman Harold Ford, Jr., whose districts serve our customers, as we serve their constituents, for their interest in these very important issues.

I am going to limit my remarks this morning to 5 minutes. I hope that you will have time to review my more detailed written statement, and accept it into the subcommittee's records.

As you have heard, Memphis is a large—in fact it is TVA's largest—customer, accounting for approximately 11 percent of TVA power sales. Together, Memphis and Knoxville purchase about 16 percent of TVA's power for distribution to over half-a-million customers. Accordingly, we have a significant interest in how Federal electric restructuring legislation affects the Tennessee Valley, generally, and TVA, particularly.

We spent countless hours debating and analyzing the environment in which we believe we will operate in the future. Our customers' needs are our primary concern. It is of paramount importance to our customers that we maintain our ability to provide them with reliable electric service at the lowest reasonable costs. To do that, we are convinced that the Tennessee Valley must be open to wholesale electric competition, which is already a reality in many other parts of the country. Simply put, our belief is that a

competitive bulk power market will result in lower electric rates for our customers, without diminishing service and reliability.

This conclusion is based, in part, on our experience in the natural gas industry. Since 1986, for example, Memphis has saved our customers more than $70 million through our spot-market gas purchase program, which allows us to buy natural gas directly from marketers and producers. It has contributed to a 20 percent decrease in our natural gas rates. We are seeking to obtain similar competitive market opportunities for our electric consumers, as well.

We have been a TVA power customer for 60 years. We appreciate the good that TVA has done in the Valley, and for its residents, over those years. We believe that TVA can continue to be a force for good in the Valley, and the country, for many years to come. By the same token, we also believe that our customers would greatly benefit if the Tennessee Valley were open to wholesale electric competition. However, if we are to get access to competitive power markets, there must be changes to the way TVA does business, and most of those changes can only be made by Congress.

Fundamentally, Memphis and Knoxville have two primary objectives: access to competitive wholesale power markets, and fairness in the process of transition to such access. In furtherance of these objectives, we support Federal restructuring legislation that would: one, repeal the TVA fence and anti-cherry-picking provisions on the date of enactment; two, modify our power supply contracts with TVA to permit us access to alternative power suppliers in the near term, and three, provide for full FERC regulation of TVA transmission, wholesale power rates, and stranded cost recovery.

These three principles are essential to full and fair transition to wholesale competition. First, Tennessee Valley distributors will never gain access to competitive power markets unless, and until, the TVA fence and anti-cherry-picking provisions are repealed. Therefore, we strongly urge Congress to repeal these statutory barriers to competition, and to make their repeal effective on the date of enactment of the legislation.

Second, without the ability to terminate our contracts with TVA, we will not be able to renegotiate our contracts with TVA, or realize the benefits of competitive electric markets for another decade. These contracts, which were entered into with TVA—a Federal agency, under federally sanctioned and enforced monopoly structures—are fundamentally antithetical to electric competition in the Valley. They must be modified to equalize the parties' radically different negotiating leverage.

Finally, more specifically, given TVA's unquestionable market power, the rates, terms and conditions for TVA transmission service, as well as its wholesale power rates, and as well as the questions of how, when and from whom TVA may collect stranded costs, must also be subject to FERC jurisdiction.

In summary, we are seeking the same open access to wholesale power markets that most of the rest of the country already enjoys. We believe that our traditional power supplier, TVA, should be subject to the same FERC rules and regulations as traditional public utilities. We do not want to undercut or hamper TVA. We do

want to ensure that we, our customers, and TVA are treated fairly in the transition to a competitive, wholesale power market.

Oh behalf of Memphis Light, Gas and Water and the Knoxville Utility Board, I want to thank you for the opportunity to address the subcommittee today. We hope that you will take our views into consideration as you debate, deliberate, consider, and decide these matters. I will be happy to respond to any questions at such time as you choose.

[The prepared statement of Herman Morris follows:]

PREPARED STATEMENT OF HERMAN MORRIS, JR., PRESIDENT AND CEO, MEMPHIS LIGHT, GAS & WATER DIVISION AND REPRESENTING KNOXVILLE UTILITIES BOARD

Mr. Chairman and Members of the Subcommittee: My name is Herman Morris and I am President and CEO of the Memphis Light, Gas & Water Division ("Memphis"). I am here today on behalf of Memphis and the Knoxville Utilities Board ("Knoxville"). We would like to thank the Members of the Subcommittee for the opportunity to present our views on "Electricity Competition: The Role of Federal Electric Utilities." We would also like to thank Congressman Ed Bryant, whose congressional district Memphis serves, for his interest in these important issues. I have appended to this prepared statement several documents that we hope will assist the Subcommittee in its analysis of TVA-related restructuring issues. These documents are:

(1) A one-page summary of our positions on the Administration's TVA title in its comprehensive electric industry proposal;
(2) Our critique of the Administration's TVA title;
(3) A chart that compares existing law, several of the bills introduced last Congress, and our positions on the TVA issues;
(4) Draft legislation that we believe would be appropriate for TVA;
(5) A section-by-section summary of our draft TVA legislation; and
(6) An executed Truth-In-Testimony Disclosure Form and a short-form resume, as per the Committee's May 6, 1999 letter.

Introduction

Memphis and Knoxville have been serving electric consumers in Tennessee since 1939. We have been power customers of the Tennessee Valley Authority practically since its inception over sixty years ago. We appreciate the good that TVA has done for the Valley and its residents over those years. We and our customers have benefited from TVA's power operations in the Tennessee Valley, and we believe that TVA can continue to be a force for good in the Valley for many years to come. By the same token, we also believe that we and our half a million customers would greatly benefit if the Tennessee Valley were opened to wholesale electricity competition. If we are to have access to competitive power markets, however, there must be some changes to the way TVA does business. Most of those changes can *only* be made by Congress.

Memphis, TVA's largest customer, accounts for approximately 11 percent of TVA's power sales, serving over 385,000 electric customers in Memphis and Shelby County, Tennessee. Knoxville is TVA's fourth largest customer, providing electricity to over 170,000 consumers in a 750 square-mile service area that includes Knoxville, Tennessee and parts of each of the seven surrounding counties in East Tennessee. Together, Memphis and Knoxville purchase approximately 16 percent of TVA's power for distribution to over half a million consumerscustomers. We have a significant interest in how federal electric restructuring legislation affects the Tennessee Valley generally, and TVA in particular.

Like the other 157 distributors of TVA power, Memphis and Knoxville are members of the Tennessee Valley Public Power Association ("TVPPA"), a nonprofit organization of TVA distributors devoted to the furtherance of distributor interests. TVPPA has taken an interest in the potential impact of federal electric restructuring legislation. In some respects, as extremely large distributors, our views are different from TVPPA's. We continue to meet and discuss those differences and are attempting to achieve consensus.

We have spent countless hours analyzing the environment in which we believe we will operate in the future. Our customers' needs are our chief concern. We plan to continue that focus as deregulation of the electric industry progresses. It is of paramount importance to our customers that we maintain our ability to provide them with reliable electric service at the lowest reasonable cost. Ensuring reliability

means minimizing system disturbances so that our power is there when our customers need it. Historically, we are among the nation's most dependable electric systems. Even during the extreme heat wave in the summer of 1998, we were able to meet our customers' power needs. Our customers expect us to continue our strong tradition of reliability into the next millennium.

However, as stated, in addition to ensuring reliable service, our customers expect us to also deliver power and service at the lowest reasonable cost. To do that, we believe that we should have access to power suppliers beyond TVA. In short, distributors should be allowed access to competitive wholesale electric markets, which is already a reality in many other parts of the country.

Our belief that a competitive market will result in lower electric rates for our customers is based in part on our experience with the natural gas industry. Since 1986, Memphis has saved its customers more than $70 million through its Spot Market Gas Purchase Program, which allows Memphis to buy natural gas directly from marketers and producers. This program has led to a 20 percent decrease in Memphis' natural gas rates. We are seeking the opportunity to achieve similar savings from a competitive market for our electric customers as well. We cannot do so unless and until Congress takes action to remove the statutory impediments to a competitive power market in the Tennessee Valley.

The TVA Fence and the Anti-Cherry Picking Provision

The two primary statutory barriers to wholesale power competition in the Valley are popularly known as the TVA "Fence" and the "anti-cherry picking" provision. The Fence, a result of the 1959 amendments to the TVA Act, prohibits TVA from entering into power sales contracts that would have the effect of making TVA or its distributors a source of power supply outside its defined service area. 16 U.S.C. § 831n-4(a) (1995). This statutory provision is referred to as the "Fence" because it "fences" TVA in. It limits TVA to power sales within a defined geographic service territory that includes virtually all of Tennessee.

While the Fence confines TVA to the Tennessee Valley, the so-called "anti-cherry picking" provision is a wall of sorts to keep other power suppliers out. The Energy Policy Act of 1992, legislation that was intended to *promote* competition, provides that the Federal Energy Regulatory Commission ("FERC") cannot order TVA to "wheel" power to distributors to be consumed within the Valley. 16 U.S.C. § 824k(j) (1995). Thus, despite FERC Order No. 888, which mandates open access transmission systems throughout the country, TVA cannot be ordered to provide such access to its transmission grid for the purpose of bringing non-TVA power to distributors within the Valley. Until the anti-cherry picking provision is repealed, there will only be open transmission *across* the Valley, but not *into* the Valley. TVA will soon become an isolated island in a sea of competition where Memphis, Knoxville and other distributors will be captive customers.

In the interest of fairness, Memphis and Knoxville advocate repeal of the TVA Fence. Any legislation that would allow competitors into the Valley should also permit TVA to sell power outside the Valley. Repeal of one provision without repeal of the other would produce anomalous results and would frustrate this body's procompetitive motives in enacting such legislation in the first place. In addition, TVA's ability to reduce its debt and mitigate its stranded costs is enhanced by its ability to sell excess power outside the Fence, just as other utilities are able to mitigate stranded costs by selling outside of their traditional service territories. Memphis and Knoxville strongly urge Congress to take the necessary action to repeal both the TVA Fence and the anti-cherry picking provision, and in so doing, to open the Tennessee Valley to wholesale electric competition.

Pre-Existing Power Contracts

Even if Congress repeals the TVA Fence and the anti-cherry picking provision, Memphis and Knoxville would not be able to take advantage of the many benefits a competitive market has to offer. This is because of pre-existing long-term contracts. These were entered into under an entirely different regulatory regime. They were also entered into by parties with radically different negotiation leverage. Our current power contracts with TVA require 10 years' advance notice of termination and continue in perpetuity. This is due to the rolling nature of the contract term. Until notice of termination is given and the 10 years have elapsed, the contract remains in effect. We are convinced that any TVA restructuring legislation that fails to adjust these anachronistic contracts will unreasonably delay our access to the competitive wholesale power market and will deny our customers the benefits of competition for an unreasonably long period of time.

We recognize concerns about the sanctity of private contracts. However, those concerns are not implicated here, where one of the parties to the contracts in question

is itself an agency of the federal government. Some have proposed giving TVA distributors a right of contract *renegotiation*, as opposed to contract termination. However, the right to renegotiate without the right to terminate is no right at all. Memphis and Knoxville have, in fact, been engaged in contract renegotiations with TVA for four long years, with few, if any, results.

Memphis and Knoxville lack the bargaining power necessary to bring TVA to the bargaining table in a serious manner. The 10-year notice provision and the perpetual nature of the current contract give TVA too much bargaining power. TVA is the largest electric utility in the United States, and in the current monopolistic environment, even Memphis, TVA's largest customer, can bring little pressure to bear on TVA to obtain meaningful concessions during the course of renegotiations. Therefore, we urge Congress to equalize the parties' bargaining power. We believe that only a short-term contract termination right, exercisable by TVA distributors in the very near future, would provide the incentive necessary to motivate TVA to negotiate with us in good faith.

Memphis and Knoxville are seeking the right to terminate our long-term TVA contracts on one year's notice. Thus armed, serious arms' length negotiations could take place. Both Memphis and Knoxville might well continue to obtain a majority of our wholesale power requirements from TVA, but we need the *option* of having the ability to purchase a portion of those requirements from alternative suppliers. Perhaps more importantly, we need TVA to *know* that we have the ability to pursue such options. TVA would then be required to respond to the forces of a competitive market. Memphis and Knoxville firmly believe that the result would be a better, more efficient TVA, able to respond to our needs as customers and to compete ably for wholesale power customers in other parts of the country as well.

TVA Regulation of Distributors Should Cease

At present, Tennessee Valley distributors are subject to regulation by TVA, rather than solely pursuant to local ordinances and charters, which is are standard regulatory models in most states throughout the rest of the country. If TVA is going to be a market participant, as we think it should be, its regulation of distributors must cease. It would be inappropriate, in a competitive market, for a wholesaler to regulate retail distributors in any way. These relationships should be subject instead to regulation by the appropriate local governing body.

FERC Jurisdiction Over TVA Transmission and Wholesale Sales

In a competitive market, TVA simply should not be a self-regulated entity. Instead, like traditional public utilities, TVA should be subject to full regulation under the Federal Power Act ("FPA"), including FERC oversight of TVA transmission services, wholesale power sales, and stranded cost recovery.

With the passage of the Energy Policy Act of 1992, Congress mandated open access to most of the nation's transmission grid. However, the Energy Policy Act left several important gaps in open access, including those areas of the country that are served by TVA. As explained above, if the benefits of open access transmission are to be realized in the Tennessee Valley, Congress must act to repeal the anti-cherry picking provision of the Energy Policy Act of 1992. However, open access to TVA's transmission system alone will not provide Tennessee Valley distributors with full access to the benefits of a competitive power market. This will not occur unless TVA's charges, terms and conditions for the use of its transmission system are reasonable. Regulation by a neutral body like the FERC is essential. This would minimize the potential for discriminatory transmission rates intended, for example, to penalize distributors that choose to take advantage of the open access regime. FERC regulation would also provide a disincentive for TVA to cross-subsidize its wholesale power rates. Thus, to discourage such potential abuses and to provide a neutral forum for resolving disputes regarding TVA transmission and wholesale sales pricing, terms and conditions, FERC jurisdiction is essential.

TVA's wholesale power sales should also be subject to FERC regulation under sections 205 and 206 of the FPA. It has been suggested that TVA's rates should be subject to judicial review in the federal district courts. Unlike state and federal courts, which are ill-suited to the task of rate review, FERC has decades of expertise in regulating wholesale power rates. In addition, FERC's many years of experience with wholesale rate regulation have produced a well-developed body of law to guide FERC in the exercise of its power. Thus, it seems clear that FERC is the entity best suited to the task of reviewing, modifying, and approving TVA's wholesale rates.

Memphis and Knoxville fully expect that, as the competitive market matures and TVA's market power dissipates, FERC regulation will become increasingly light-handed. Nevertheless, we support FERC jurisdiction over TVA's wholesale rates. We are confident that such oversight will be *even-handed* and is necessary to provide

Tennessee Valley distributors the same level of protection that the rest of the country enjoys. Moreover, notwithstanding whatever environment the future may bring, regulation of TVA's rates will be essential during the early years of the transition to a competitive market.

FERC Jurisdiction Over Stranded Costs

FERC's Order No. 888 authorized public utilities' long-term customers to seek to shorten the term of their contracts in exchange for the customers' agreement to pay their fair share of legitimate, prudent and verifiable stranded costs. Order No. 888 at pp. 31,663-66; Order No. 888-A at pp. 30,191-94. We are willing to pay our fair share of any such TVA costs that are in fact stranded as a result of the transition to wholesale competition in the Tennessee Valley. We believe that stranded costs determinations should be made by a neutral body applying neutral principles. We support full FERC jurisdiction over TVA stranded cost determinations in accordance with the rules, principles, and protections afforded by FERC Order No. 888.

Order No. 888 provides the fairest and most efficient way to deal with the issue of TVA's stranded costs. First, as a practical matter, there is no reason whatever to "re-invent the wheel" in prescribing the procedure by which TVA should be permitted to recover its stranded costs. FERC has already performed an exhaustive review of the merits of various approaches to stranded cost recovery, the result of which was Order No. 888. This occurred only after a careful and circumspect rulemaking proceeding that took nearly two years to complete. During the course of the Order No. 888 proceedings, FERC received literally tens of thousands of pages of commentary from all segments of the industry, consumers, and state and federal agencies. There is no sound reason not to apply for the Order No. 888 stranded cost mechanism to TVA. Failure to do so would likely entail further contentious administrative proceedings and would delay even further Tennessee Valley distributors' access to the competitive wholesale power market. It would also likely establish ground rules for TVA stranded costs that are incompatible and inconsistent with other utility systems and competitive electric markets.

In addition, Memphis and Knoxville believe that, from a substantive perspective, Order No. 888 represents the fairest way to address the problem of costs stranded as a result of the transition to a competitive market. Order No. 888 mandates a "direct assignment approach" to stranded cost recovery, pursuant to which stranded costs are recovered specifically from the departing generation customer whose departure caused the costs to be stranded. Order No. 888 at pp. 31,797-800. FERC explained that it favored a direct assignment approach over a broad-based, system-wide approach for several reasons. *Id.* FERC found that direct assignment would provide greater accuracy, certainty, and administrative ease than would an up-front, broad-based approach. FERC further determined that direct assignment would be more consistent with "the well established principle of cost causation, namely, that the party who has caused a cost to be incurred should pay it." *Id.*

Similar considerations have led Memphis and Knoxville to support a direct assignment approach to TVA's stranded costs. One great concern with regard to stranded costs is the potential for cost-shifting among distributors. A direct assignment approach would obviate such concerns by ensuring that stranded costs are directly assigned to the distributor responsible for causing such costs. In addition, in contrast to an up-front, broad based approach, Order No. 888's approach to stranded costs would preclude TVA from charging its existing customers up front for costs that may never actually become stranded. *Id.* at 31,798. Finally, Order No. 888's direct assignment approach eliminates the incentive that would exist, under a broad-based approach, for a utility to "try to recover the costs of all of its uneconomic assets whether or not they were prudently incurred." *Id.* at 31,799. For all of the foregoing reasons, Memphis and Knoxville support FERC jurisdiction over TVA stranded cost determinations in accordance with Order No. 888.

Antitrust

Finally, TVA should be subject to the antitrust laws to the same extent that such laws apply to other governmental entities competing in the electricity marketplace. Memphis and Knoxville support the availability of injunctive relief against TVA for violations of the federal antitrust laws, but believe that, for reasons of public policy, TVA should not be subject to civil damages liability.

Conclusion

In conclusion, Memphis and Knoxville strongly urge the repeal of the TVA Fence and the anti-cherry picking provision, as well as shortening to one year the ten-year notice periods of our long term power contracts with TVA. The rates charged by TVA for transmission services and wholesale power, as well as the questions of how,

when, and from whom TVA may collect stranded costs, must be regulated by a neutral body, such as FERC.

We appreciate the opportunity to address the Subcommittee today, and we hope that you will take our views into account as the debate regarding TVA's appropriate role in a competitive wholesale power market proceeds.

Mr. BARTON. Thank you, Mr. Morris.

We would now like to hear from Mr. Baker, who is the president of Middle Tennessee Electric Membership Corporation. Again, your statement is in the record. We will ask you to try to summarize it in 5 minutes.

STATEMENT OF JAMES O. BAKER

Mr. BAKER. Thank you, Mr. Chairman. As a slow-talking Tennessean, I will try to get that in.

My name is James O. Baker. I am president of the Middle Tennessee Electric Membership Corporation. It is an electric cooperative with headquarters in Murfreesboro, Tennessee.

Mr. BARTON. Put your microphone, Mr. Baker, a little bit closer to you. Thank you.

Mr. BAKER. I am testifying today on behalf of the Tennessee Valley Public Power Association.

TVPPA has long supported the mission of the Tennessee Valley Authority. An integral part of that mission is to provide power at the lowest feasible rate to the region's consumers. In an effort to preserve the benefits of TVA, and acknowledge the changes that are evolving in the electric utility industry because of competition, TVPPA has worked closely with TVA to develop a TVA title that can be supported by both organizations, and by the Valley's congressional delegation.

We have made tremendous progress in that effort. Of the eight sections described in my prepared statement, TVA and TVPPA have agreed on all except two provisions. These relate to the regulation of distributors and the TVA wholesale rate review. Attached to my written statement is a copy of that draft. Differences between TVA and TVPPA are noted in italics.

Because of time limitations, I will limit my comments to just the major highlights of these bills. First, the removal of the TVA fence and repeal of the anti-cherry-picking provision. Since 1959, with certain exceptions, TVA and the distributors have not been permitted to sell power outside the fence erected by Congress around the TVA service area. Because TVA was not allowed to sell power outside the fence, Congress, in the 1992 Energy Policy Act, added language to prevent outside utilities from using the new wholesale access provisions of the Federal Power Act to require TVA to make its transmission to serve, or cherry pick, selected distributors served by TVA. If Congress had not added this anti-cherry-picking provision, TVA and distributors would have been placed in a competitive wholesale environment with, in effect, one hand tied behind them.

Section 002 of our proposed TVA title would repeal both the fence and the anti-cherry-picking provisions of the existing law on the effective date of the Federal restructuring legislation. This would permit, two-way, open wholesale competition in the TVA service territory for the first time. Under subsequent provisions,

section 003, TVA would be able to sell surplus power outside the fence, at wholesale only, with certain limitations.

Second, the regulation of the transmission system. Our draft TVA title further recommends that TVA transmission rates, terms and conditions shall be subject to the regulation by the Federal Energy Regulatory Commission. Distributors should be permitted to buy wholesale power from the most economical and reliable source. FERC regulation would be desirable to assure that the distributors have fair access to TVA's transmission lines, and that TVA transmission rates are just and reasonable.

Third, renegotiation of wholesale power contracts. Under TVA's present wholesale power contracts, distributors cannot buy wholesale power from another source, nor can they generate their own power. These limitations are clearly contrary to the spirit of a competitive environment. In the interest of their customers, distributors should have the option of shopping for the lowest cost, lowest source of wholesale power, or generating power for themselves. Section 005 of our draft, therefore, authorizes TVA and distributors to renegotiate the existing contracts within 1 year of the enactment of a comprehensive energy legislation. If TVA and the distributors cannot reach agreement on new contract terms, and if FERC has approved TVA's stranded investment recovery, the distributor may terminate its existing contract on 3-year's notice from the FERC order.

Fourth, the wholesale rate jurisdiction. As long as TVA has unilateral right under a power contract with distributors to set wholesale power rates, TVA believes that the distributors should have access to a third-party review of any TVA rate action which a distributor believes to be unjust, unreasonable, or unduly discriminatory. This section would give distributors the right to subject rate disagreements to third-party binding arbitration and/or judicial review. TVA does not agree with this recommendation. We understand that. It is the position of the TVA board that they should have continual final authority to set and adjust wholesale rates. We have continued discussions with TVA in an effort to resolve that.

Mr. Chairman, I appreciate the opportunity to testify. I will be available for questioning.

[The prepared statement of James O. Baker follows:]

PREPARED STATEMENT OF JAMES O. BAKER ON BEHALF OF TENNESSEE VALLEY PUBLIC POWER ASSOCIATION

My name is James O. Baker. I am President of the Middle Tennessee Electric Membership Corporation, a rural electric cooperative with headquarters at Murfreesboro, TN. The Middle Tennessee Electric Membership Corporation purchases all of its power at wholesale from the Tennessee Valley Authority (TVA), and provides electric service to more than 115,000 customers in four counties. It is one of TVA's largest wholesale customers, and is one of the largest rural electric cooperatives in the United States, on the basis of number of consumers served.

I am testifying today on behalf of the Tennessee Valley Public Power Association. I am a member of the Board of Directors of TVPPA. I am also a member of TVPPA's Government Relations Committee, and have been intimately involved for almost three years in the work of this committee and a predecessor committee in developing TVPPA's positions on electric industry restructuring. I served from 1997 to 1999 as President of the National Rural Electric Cooperative Association, a national organization representing about 1,000 of the nation's rural electric cooperatives.

TVPPA represents the interests of 159 municipal electric utilities and rural electric cooperatives that purchase all of their wholesale power requirements from TVA and distribute it to about eight million people in seven states.

Through its committee structure and membership, TVPPA has been working for almost three years to develop positions on electric industry restructuring legislation. This effort culminated in the development of positions that were reviewed at district meetings of the Association, and last year were approved by the Association's Board of Directors. Based on these restructuring positions, the Association subsequently prepared legislative language for a TVA title that could be incorporated in federal restructuring legislation. A copy of language for this title is attached. I believe this language addresses virtually all of the questions raised in Chairman Barton's letter of May 10 inviting me to testify here today.

In formulating its restructuring positions, TVPPA has been guided foremost by its concern for consumers. All members of TVPPA are consumer-owned, non-profit electric utilities. The Association therefore has a responsibility to safeguard the interests of its consumers. By seeking to keep rates as low as possible, TVPPA believes that the benefits will accrue to the Tennessee Valley, and that its example will be helpful to neighboring areas.

TVPPA does not endorse any specific restructuring bill. The Association's position paper of September 29, 1998 states that "it is desirable to allow the customer to have a choice of electric suppliers provided that the federal legislation is designed to benefit and be in the best interest of all the electric customers served by TVPPA members." The paper adds that Congress should allow states to consider the option of instituting customer choice, but should not mandate the outcome of such consideration, nor should the Congress mandate customer choice by a date certain.

TVPPA has long supported the mission of the Tennessee Valley Authority. TVA has been an excellent source of reliable, reasonably priced power, and has been instrumental in advancing the economic development of the Tennessee Valley. Demand for electric power has grown considerably, and continued increases are anticipated.

Members of TVPPA want TVA to continue to be a viable source of electric power supply. However, the electric industry has been moving toward a more competitive environment, especially in wholesale power supply, and all utilities must adapt to changing conditions. TVPPA believes that its recommendations, if adopted, will make TVA more competitive, and will be good for that agency as well as the distributors and their customers.

In an effort to preserve the benefits of TVA for the future, TVPPA has worked closely with TVA to attempt to develop positions that can be supported by both organizations. For the most part, this effort has been successful. Of the eight sections described below, TVA and TVPPA have agreed on all except two provisions—those in Section .006 Regulation of Distributors, and Section .008 TVA Wholesale Rates to Distributors. The differences are noted in italics in the applicable sections described below.

Although TVPPA's restructuring positions have been endorsed by the vast majority of its members, two member utilities—the Knoxville Utilities Board and Memphis Light, Gas and Water Division—have differed with TVPPA on a few points. A witness from Memphis is scheduled to testify before your committee and will describe their concerns. TVPPA respects the views of Knoxville and Memphis, and have met with representatives of these utilities in an effort to arrive at a consensus. These discussions are continuing, and we are hopeful that agreement will be reached.

The following describes provisions that TVPPA believes should be incorporated in any restructuring bill adopted by Congress.

Sec. 002. Equitable Competition

This section contains three provisions to protect consumer interests.

Removal of the TVA "fence" and repeal of the "anti-cherry picking" provision. Since 1959, when TVA was authorized to issue bonds in the private financial market, TVA and the distributors have not been permitted to sell power outside of a "fence" that was erected by Congress around TVA's service area. An exception was made, however, for power exchanges between TVA and the investor owned utilities with which it had interconnections at that time.

Because TVA was not allowed to sell outside the fence, Congress in the 1992 Energy Policy Act added language to prevent outside utilities from using the new wholesale access provisions of the Federal Power Act to require TVA to make its transmission available to serve (or "cherry-pick") selected distributors served by TVA. If Congress had not added this "anti-cherry picking" provision, TVA and the

distributors would have been placed in a competitive wholesale environment with one hand tied behind them.

Section 002 of our proposed TVA Title would repeal both the "fence" and the anti-cherry picking provisions of existing law on the effective date of federal restructuring legislation. This would permit two-way, open wholesale competition in the TVA service territory for the first time. Consumers in the Valley would then enjoy the benefits of wholesale competition that were made available to consumers in the rest of the country under the Energy Policy Act of 1992 and FERC Order 888. Under subsequent provisions (Sec. 003), TVA would be able to sell surplus power outside the fence at wholesale only, with certain exceptions.

Regulation of transmission. TVPPA recommends that TVA's transmission rates, terms and conditions shall be subject to regulation by the Federal Energy Regulatory Commission. This provision is predicated on the assumption that, in a restructured industry, distributors should be permitted to buy wholesale power from the most economical, reliable source. In the event that a distributor elects to purchase wholesale power from a supplier other than the Tennessee Valley Authority, the distributor should be able to utilize TVA's transmission lines to "wheel" the bulk power to the distributor. In this event, FERC regulation would be desirable to assure that the distributor has fair access to TVA's transmission lines, and that TVA's rates are just and reasonable. Similar protection is given to utilities utilizing transmission lines owned by investor owned companies.

Sec. 003 TVA Power Sales

This section prohibits TVA from offering long-term contracts for firm energy sales outside of its service area at rates more favorable than those offered to distributors, unless the power distributors agree to such sales. This section therefore would assure that consumers served by the distributors within the Valley have access to TVA's most favorable rates. Put another way, it would prevent TVA from using sales within the Valley to subsidize sales of power at lower cost outside of the region.

Sec. 004. Stranded Investment Recovery

The purpose of various provisions in this section is to assure that consumers are not burdened with undue costs of stranded investment—that is, investment made in the past by TVA to build facilities that are no longer economical in a competitive environment. TVA and the distributors would be required to negotiate the amount of the stranded investment that should be borne by the customers. If an agreement cannot be reached, FERC is given authority to decide the question.

Two other provisions relating to stranded investment also are included. One prohibits TVA from charging stranded investment to distributors after September 30, 2007. This limitation was inserted because on October 1, 1997 the distributors entered into new 10-year contracts with TVA. Wholesale rates called for in these contracts provide sufficient funds to compensate TVA for an appropriate share of its stranded investment. Distributors who complete the term of the new contracts therefore are assumed to have discharged their obligations for payment of stranded investment.

Another provision in this section requires TVA to use any funds recovered from stranded investment to repay its debt. This requirement assures that, consistent with the objectives of TVA's 10-Year Plan, recovery of stranded investment would reduce TVA's debt and thereby lower TVA's interest expenses, which constitute a significant portion of TVA's total expenses charged to consumers. TVPPA strongly supports the goal of the 10-Year Plan to reduce TVA's debt to $13 billion, and believes that its recommendation would be an important element in achieving that goal.

Sec. 005. Renegotiation of Wholesale Power Contracts

Under TVA's present wholesale power contracts with distributors, the distributors cannot buy wholesale power from another source, nor can they generate their own power. These limitations are clearly contrary to the spirit of a competitive environment. In the interests of their customers, distributors should have the option of shopping for the lowest cost source of wholesale power or generating power themselves. Thus, Sec. 005 authorizes TVA and the distributors to renegotiate their existing power contracts within one year of the enactment of comprehensive energy legislation. If TVA and a distributor cannot reach agreement on new contract terms—and if FERC has approved TVA's stranded investment recovery—the dis-

tributor may terminate its existing contract upon three years' notice from the date of the FERC order.

Sec. 006. Regulation of Distributors

As locally owned enterprises controlled by their consumers, distributors believe that they are in the best position to determine their own rates. Consequently, this section provides that the rates, terms and conditions of retail rates are not subject to regulation by TVA.

TVA, however, does not agree with a TVPPA recommendation that TVA be allowed to include provisions in its power contracts with distributors that would be necessary in order to achieve the objective in the TVA Act that power be sold to the ultimate consumer at the lowest feasible rates. TVPPA recommends that TVA, in its power contracts, allow flexibility in the use of funds by a distributor "if those funds are not used to subsidize or support activities that have no reasonable relationship to the financial benefits of the electric utility operations of the distributor."

Sec. 007. Antitrust Coverage

In order to assure that TVA does not use its market power to prevent distributors from obtaining wholesale power from the most economical source, this section subjects TVA to the injunctive relief and criminal penalties—but not the civil damage provisions—of the antitrust laws. TVA would not be made subject to civil damages because, unlike a private corporation whose damages might be paid by stockholders, consumers would ultimately pay any damages assessed against TVA. TVPPA believes that injunctive relief and criminal penalties would be sufficient deterrents to antitrust activities. This standard is comparable to the antitrust standards generally applied to local governmental entities.

Sec. 008. Wholesale Rate Jurisdiction

As long as TVA has a unilateral right under a power contract with distributors to set wholesale power rates, TVPPA believes that distributors should have access to a third party review of any TVA rate action which a distributor believes to be unjust, unreasonable or unduly discriminatory. This section therefore would give distributors the right to subject rate disagreements to third-party binding arbitration and/or judicial review.

TVA does not agree with this recommendation. The TVA position is that the TVA Board should continue to have final authority to set and adjust TVA wholesale power rates.

Mr. BARTON. Thank you. The Chair is going to recognize himself for the first 5-minute question period.

My first question is a general question. I just want to make sure that we get this on the record. Each of you gentleman do not support the same type of Federal legislation, obviously. But from reading your testimony and listening to your oral comments, my assumption is that you all do agree that there should be, and you support, Federal legislation in this area in this Congress. Is that correct? Is there anybody here that proposes that we not do a bill? You have to say something for the record. We can't just let you look at me.

Mr. COLEY. Mr. Chairman, our company is on record as saying that, ultimately, we believe competition is in the best interest of consumers in the United States. The timing of that action and when and how it would take place is simply the jurisdiction of Congress and State commissions. We understand that. Our company is attempting to prepare ourselves for competition. Whenever it occurs, we hope that we will be able to compete and the playing field will be level.

Mr. BARTON. I am going to take that as a "yes," you support a bill this year. Is that correct?

[Mr. Coley nods head indicating yes.]

Mr. MORRIS. I would offer a ''yes,'' as well. We simply want to have our perspective and concerns considered and apparent in whatever the final legislation is.

Mr. BARTON. I understand that part of it, correctly. Mr. Baker?

Mr. BAKER. I think the distributors generally feel that competition is inevitable, and would be remiss in not cooperating in how it is brought about.

Mr. BARTON. Okay. So is that a ''maybe,'' or a ''yes''?

Mr. BAKER. That is a ''yes.''

Mr. BARTON. Okay. Mr. Medford?

Mr. MEDFORD. Mr. Chairman, TVA believes that Federal legislation in this area is necessary.

Mr. BARTON. Okay. So that is a ''yes.''

Mr. MEDFORD. Yes, sir.

Mr. BARTON. Okay. Let the record show all four witnesses said ''yes,'' with different degrees of enthusiasm; but they all said ''yes.''

Now, Mr. Coley, Mr. Morris in his testimony, differed a little bit in that some of the provisions he supports on behalf of the distributors—and the largest customer—he wants date of enactment opportunity, as opposed to a date certain, as in the administration bill, which is 2003. Of course, we haven't even put together a bill, yet, here at the subcommittee. Would you support the provisions that Mr. Morris supported on date of enactment, on behalf of the association that you represent?

Mr. COLEY. I simply do not recall all the conditions he articulated.

Mr. BARTON. He wants wholesale competition, date of enactment. Isn't that correct? As opposed to waiting for 4 years under the administration bill.

Mr. COLEY. We would be open, whenever Congress decides to have open competition, to compete on whatever day wholesale competition might take place. Our fundamental issue is that if the fence comes down that there be a level playing field among all participants in the competitive wholesale market.

Mr. BARTON. Okay. Now, I want to ask—this is a speculative question. Congressman Norwood is not here. I wish he were here. There is some discussion about privatization of TVA. Now, I don't want to get into whether you all are for that or against it. But I want ask you, Mr. Coley and you, Mr. Morris, if we were to consider privatization, is it practical? I mean, could you actually privatize the assets of the TVA in a rational, timely fashion, or is that impractical?

Mr. COLEY. I simply couldn't respond to that. Our issues—the issues we have been addressing—have been the fence and not privatization. Obviously, $28 billion of debt is problematic in privatizing the entity.

Mr. BARTON. I mean, you do represent most of the investor-owned utilities in the region. I understand Southern Company is not part of your coalition.

Mr. COLEY. That is correct.

Mr. BARTON. But with that exception, if we were going to have privatization, the assumption would be that it would be the investor-owned utilities, either in the region or outside the region, that would be most likely to bid on the assets.

Mr. COLEY. That could be. But as markets are being opened up today, that is certainly not the case. For example, California utilities have purchased assets in New England.

Mr. BARTON. Right.

Mr. COLEY. So that's not a regional issue.

Mr. BARTON. Mr. Morris, would you care to comment on the practicality of privatization?

Mr. MORRIS. Yes, sir. I will also offer comment that certainly, if Mr. Coley can't comment on that, I am not going to step out too far on that limb, myself. We believe that there is a place in the mosaic of options that should be available to our customers for public power. We are committed to that. We think it offers additional benefits to the overall fabric of our ability to deliver services to our customers—to all of America's customers, as a matter of fact.

TVA is a very complex entity. Without going into great detail, I think you are exactly on point in that in addition to the issues of the complexity of TVA, and whether it could be workable, that there ought to be a consideration of the benefit and value of public power as an option that we, for one, would want to keep available to our customers.

Mr. BARTON. Thank you. My time has expired. Mr. Wynn is recognized for 5 minutes. Mr. Sawyer was just there; then he disappeared. So Mr. Wynn is here and we recognize him for 5 minutes.

Mr. WYNN. Thank you, Mr. Chairman. Unfortunately, I had to step out earlier, so I missed part of the testimony. I was noting, Mr. Morris, in your statement, I just need a clarification. Again, I apologize for not being present at the time. You are calling to repeal the TVA fence and the anti-cherry-picking provision. That kind of piqued my interest. What, exactly, do you mean by that?

Mr. MORRIS. There are two provisions in two different pieces of legislation. One restricts TVA and its ability to sell power outside of a specific geographic area. The other restricts wholesale producers from outside of that same geographic area from selling power into the TVA region.

Essentially, what repealing the fence and the anti-cherry-picking provision would do is to open the area up so that there could be sales from outside-in, and from inside-out. We believe that all of the customers served and affected would benefit. So it essentially tears down a wall keeping those on the outside from selling into the area, and those on the inside from selling outside the area.

Mr. WYNN. I think I am pretty comfortable with that. I think it is the cherry-picking. When you say that you want to repeal anti-cherry-picking, that suggests that you are in favor of cherry-picking. I don't think that is, probably, what you mean. I would like you to clarify.

Mr. MORRIS. Well, we simply adopted the general term that is used in discussing that provision. It is called the ''anti-cherry-picking'' provision. We simply adopted that as, more or less, a term of art to communicate—perhaps not quite as well as we should have—the concept that we would be in favor of permitting entities and parties outside of the Tennessee Valley to sell power to customers inside the Valley. At the same time, we would be interested

in seeing TVA and other parties inside the Valley have the ability to sell power to customers outside of the Valley.

Mr. BARTON. Could I? Would the gentleman yield?

Mr. WYNN. Certainly, Mr. Chairman.

Mr. BARTON. I think what you are saying is that you want the right—you, your utility, wants the right—to go out and try to buy power wholesale.

Mr. MORRIS. Yes.

Mr. BARTON. Okay. He is the "cherry." That is what he is telling us.

Mr. WYNN. In that context, I think I am very satisfied. I don't have any further questions at this point. Thank you, Mr. Chairman.

Mr. BARTON. The gentleman, Mr. Bryant, is recognized for 5 minutes.

Mr. BRYANT. Thank you, Mr. Chairman. I thank this very distinguished panel. I think your views have been presented very effectively. I think your views also bring to light the extreme difficulties and complexities involved in this type of restructuring.

Mr. Coley, I am particularly interested in you and your testimony. It seems to shed light on how difficult this is. At one point you say that there is place for TVA in a competitive market. Later, I think in your testimony today, you have compared TVA to the airlines and the Air Force getting involved in competition; almost to say that the Air Force does not belong there, and should not be in competition with a private-sector industry.

TVA is here. I don't know. How do you regulate and restructure and make it a level playing field—not tilted—when you have the private sector in there with the public sector?

Mr. COLEY. Certainly. TVA has done, I think, a marvelous job in some development areas within the Valley. I think they have done a good job. We certainly have no quarrel with TVA's role in flood control and economic development and some of the things they have done in the Valley. It has been very positive for the people who live there.

Mr. BRYANT. Let me ask you this: Do you think, for instance, that ought to be paid for by TVA ratepayers, or should it be paid for by this Congress?

Mr. COLEY. I simply could not answer that question. I would assume it would be accomplished on the same basis that it is accomplished in many other areas of the country.

For example, in the area in which I serve, my company provides that in the operation of our hydroelectric power facilities.

Mr. BRYANT. Duke Power pays for the navigation work involved with rivers and economic development?

Mr. COLEY. We built the lakes for the hydroelectric projects. We manage those consistent with the mandates of FERC, and the requirements of the Corps of Engineers—yes.

Mr. BRYANT. In this environment that we would propose, again with the private sector competing against the public sector, do you think TVA ought to be allowed to build new generation facilities?

Mr. COLEY. I think there should be some control on TVA building new generation facilities. I think they amassed a tremendous amount of debt: $27 billion in building facilities.

When I read TVA's own plans for new generation, I note that there is really no need indicated for new generation for some time to come. I think it could be controlled. I think the mistakes of the past in investing huge amounts of dollars in assets which are not used or useful, should be controlled. It should not be repeated.

Mr. BRYANT. Should the fence that has been taken down, should that go both ways in a deregulated world? Should TVA be allowed to sell outside the fence?

Mr. COLEY. We have no problem with the fence coming down at all, as long as we participate in the market on an equal basis. For example, TVA has revenues of $6.7 billion a year and makes payments in lieu of taxes of $264 million a year. My company has two-thirds of TVA's revenue, but I pay 3.5 times the tax burden that TVA does. Stated another way, if I had TVA's revenue, I would pay $1.1 billion a year in taxes. TVA today pays $264 million in lieu of taxes.

Mr. BRYANT. Well, in regard to the level playing field, would you be willing, as Duke Power, to operate under TVA's mandate that they charge the lowest possible electric rate, versus the current standard under the Federal power act with you operate under—which is a just and reasonable standard. Would you be willing to operate under the same standard: you sell at the lowest possible rate, versus the just and reasonable rate, that you operate under now?

Mr. COLEY. Well, I would like to think that as one of the lowest-cost utilities in the Southeast, we do sell at the lowest possible rate. But in doing so, we pay a tremendous amount of taxes, and also pay about 365 million shareowners of shares of stock, $2.55 a year in dividends. They, too, pay taxes on that.

I think if you talk about moving to a competitive market, then ultimately the market will determine the prices that are charged.

Mr. BRYANT. Are you advocating that TVA be subject to treble damages?

Mr. COLEY. Well, it seems to me that the reason the anti-trust laws were passed, and treble damages were included in anti-trust laws, was as a deterrent to people violating those laws. It would seem to me that if there really is no penalty for having violated the laws, then you could expect that people would not adhere to them.

Given the fact that TVA has, at least on three occasions confirmed in courts, gone beyond the congressional boundaries that were place upon them in 1959, I am not optimistic to believe that not having treble damages as part of the anti-trust legislation apply to TVA would be effective.

Mr. BRYANT. The usual standard is that governmental entities are not subject to punitive damages—treble-type damages—because the people themselves would be asked to pay up this money. Would not a better relief be simply to allow Congress to exercise proper oversight over TVA, and I assume that you have made these efforts?

Mr. BARTON. This would have to be the last question from the gentleman in this round.

Mr. COLEY. I suggest that it might be difficult for Congress to do, simply based upon the fact that TVA's lack of adherence to the boundaries imposed by Congress were ultimately solved only by

being challenged by those of us in the business who were injured by that behavior.

Mr. BRYANT. I thank the chairman.

Mr. BARTON. The gentleman from Ohio, Mr. Sawyer, is recognized for 5 minutes.

Mr. SAWYER. Thank you, Mr. Chairman. At the beginning of my opening statement I mentioned a couple of questions that I wanted to ask about. Let me reiterate those for you now, more specifically.

TVA, and Bonneville in particular, control a large portion of the transmission grid. Is it your belief that FERC should have jurisdiction equally over all participants in the transmission grid? If we could just run down the line, I would appreciate it.

Mr. MEDFORD. Yes. TVA agrees that FERC should have jurisdiction over all transmission. And as a matter of fact, the TVA title, the administration's bill, and the TVPPA/TVA draft legislation contain such a provision.

Mr. SAWYER. I think each of you were, probably, fairly clear. I just want to clarify it for the record.

Mr. BAKER. The distributors support that.

Mr. SAWYER. Pardon me?

Mr. BAKER. The distributors support that.

Mr. MORRIS. Memphis and Knoxville would certainly agree that FERC should have jurisdiction over TVA's transmission.

Mr. COLEY. We, likewise, believe that if the fence does come down, that TVA should be subject, fully, to all FERC jurisdiction just as we are, including price regulation.

Mr. SAWYER. Let me ask a similar question, then. There are several schools of thought with regard to the requirement of participants to join a particular RTO. Is it your belief that ought to be within their authority to order, or ought it to be market-driven and entirely voluntary? Mr. Medford?

Mr. MEDFORD. I don't hold myself out as an expert on the solution to regulation of the transmission grid, as it pertains to going with transmission companies, ISOs, a national grid, or whatever. We see no reason why TVA should be treated differently with regard to the RTO solution which eventually comes forward.

Mr. SAWYER. Mr. Coley.

Mr. COLEY. We certainly support the idea of regional transmission organizations, or transmission companies. I suspect that in deregulation, you might find those naturally form because of economic interests of owners of transmission, rather than having a mandated FERC requirement that each owner of transmission join a specific RTO.

Mr. SAWYER. Do you believe that those who choose not to join ought to be able to be ordered to take part?

Mr. COLEY. If the form is to be regional transmission organizations, it is difficult for me to say that someone should be forced to join. I suspect that market power may well dictate what happens.

Mr. SAWYER. I suspect you are right. Mr. Morris?

Mr. MORRIS. We are still getting up to speed on that issue. I recognize that FERC has made some comments, just this week, regarding that matter. We are studying and analyzing it. We certainly have great confidence in the FERC to do the right thing. We are still getting up to speed on that issue and I would defer re-

sponding to that at this time and would be happy to give something in writing, at a later date.

Mr. SAWYER. Thank you, Mr. Morris. Mr. Baker?

Mr. BAKER. I would echo Herman's comments there. We are looking at that. As you know, the jury is still out, nationwide, on what the proper methodology would be. I think the process will eventually determine that. I think we would certainly support that in the light of open competition.

Mr. SAWYER. Thank you. Mr. Medford, there is so much discussion that has come down around the 10-year contracts and the 10-year business plan. The ability to project the kind of financial security that a large, capital-intensive organization needs to operate is really built around those.

It seems to me that TVA continues to advocate its 10-year business plan, but endorses the administration proposal of restructuring by 2003. How do you reconcile those two?

Mr. MEDFORD. First, Congressman, I would like to observe that the administration's proposal does not cause the contracts to go away as of January 1, 2003. You are right, though, it does admit the possibility that some part of our load could leave before the end of the 10 years of the Ten-Year Business Plan. If there is stranded investment on TVA's part at that time, the administration bill also provides for FERC adjudication of stranded investment. We believe that is sufficient to allow TVA to meet the aims of the Ten-Year Business Plan.

Mr. SAWYER. GAO calls for a revisitation of that 10-year plan, based on what they describe as a more realistic set of assumptions. Are you in a position to begin to share that sort of reassessment with the work of the committee as we make important decisions about the future of this industry in your part of the country?

Mr. MEDFORD. We agree with the GAO in one sense, in that regard, in that we view the 10-year plan as a living document. There are a number of changes that have occurred since the 10-year plan was originally developed.

Mr. SAWYER. It is sort of a rolling 10-year plan.

Mr. MEDFORD. Some of them are favorable and some of them are not. One that is favorable, for example, is that our debt reduction, to date, is ahead of schedule, compared with the 10-year plan.

Mr. STEARNS [presiding]. The gentleman's time has expired.

Mr. SAWYER. I thank the chairman. Thank you, very much. I may come back.

Mr. STEARNS. The gentleman from Oklahoma, Mr. Largent, is recognized for 5 minutes.

Mr. LARGENT. Thank you, Mr. Chairman. Mr. Morris, what are the current prices you are paying to TVA for you wholesale electricity?

Mr. MORRIS. We are paying TVA 4.25 cents per kilowatt/hour.

Mr. LARGENT. Okay. Mr. Coley, what does Duke sell wholesale electricity at, average?

Mr. COLEY. Our current wholesale price is around 4 cents a kilowatt/hour.

Mr. LARGENT. So that, Mr. Morris, is why you want to have wholesale competition, inside the fence? Because you might have

the opportunity to purchase wholesale electricity from Duke for a lower price than you currently pay for TVA.

Mr. MORRIS. Well, to be very candid, the reason we want to have wholesale competition is because that is what our customers are asking us to do that for them. They are asking us to have access to other options. We are very responsive in trying to meet and satisfy our customers' needs. If there is other power that offers them an opportunity to trim or reduce their costs, we want to try to make it available to them.

Mr. LARGENT. Okay. Mr. Medford, Mr. Coley talked about certain aspects of any Federal regulation dealing with TVA that they would like to see. I would just like to kind of run through that list as I jotted it down, and find out where TVA is on that. I mean, just if you find those agreeable or egregious.

First was FERC regulation. I assume that is over the transmission lines, but he also included rate making. What is TVA's position on that?

Mr. MEDFORD. As I have indicated earlier, Congressman, I agree with regard to regulation of the transmission system. Frankly, we don't see any advantage, with regard to wholesale rates, of having one group of commissioners—that being FERC—appointed by the President, confirmed by the Senate, regulating the activities of another group of federally appointed officials—that being the TVA Board. It is antithetical to me that, as we go into deregulation generally, we would increase regulation of TVA's wholesale rates.

Mr. LARGENT. And what about the transparency of the costs? In other words, the fear would be that if FERC was not regulating your transmission rates, perhaps you would be putting some of the costs of your generation into the costs that you are charging Duke to run their electricity across your transmission lines.

Mr. MEDFORD. Well, I would argue that if one has that concern, you could have that concern about almost any entity. The fact is that FERC, in that area, does a very thorough job of reviewing rates. By the way, we make available our transmission rates to FERC now. It would not be possible to funnel costs from one area into the other.

Mr. LARGENT. And what about application of anti-trust laws—all anti-trust laws—applicable to TVA?

Mr. MEDFORD. Well, under the administration bill, we have agreed to application of parts of the anti-trust law. With regard to treble damages, when you are talking about treble damages against a privately owned firm, presumably the folks that eventually bear the burden of that are stockholders. With regard to TVA, the folks who would eventually bear the burden of that would be ratepayers, and we don't think that is fair.

Mr. LARGENT. Okay, and new generation—limitations on new generation apart from your customers assuming liability?

Mr. MEDFORD. We see ourselves as ongoing into a deregulated environment as being primarily a regional player and providing facilities to meet regional needs. That having been said, we are opposed to some sort of artificial constraint that says we can't have any more generation or we can only have this much generation. We are willing for the public to see what we do in the way of generation. Our plans, right now, are for generation to meet the needs of

the Tennessee Valley. That is the way that we plan to continue to do business.

Mr. LARGENT. What about the equity issue on taxes, or payments in lieu of taxes?

Mr. MEDFORD. Well, let me say two things. We have compared our in lieu of taxes and the State and local taxes paid by the distributors of TVA power with the rate of taxation for large private utilities. Those rates are very comparable. In fact, in some cases, we and the distributors pay more than they do.

Mr. LARGENT. Let me just stop you there for just a second. In the testimony by Mr. Coley, he has here that in 1998 TVA's gross revenues were $6.7 billion, but its tax expenditures were only $264 million. Duke Power's gross revenues were $4.5 billion, and yet their total share of Federal, State and local tax was $854 million. So they did two-thirds of the business you did, and paid not quite four times as many taxes.

Mr. MEDFORD. And the difference between those two is Federal taxes, it is true. We do not pay Federal taxes. The bulk of Federal taxes are on income. By design, our rates are set to have a very low net income. That is the distinction between the two. But at the State and local levels, we pay, essentially, the same rate of taxes as large private utilities do.

Mr. LARGENT. Thank you, Mr. Chairman.

Mr. STEARNS. The gentleman's time has expired. The gentleman from Michigan, Mr. Dingell, is recognized for 5 minutes.

Mr. DINGELL. This question to Mr. Baker and to Mr. Medford. Gentlemen, does TVA keep its current subsidy for new and old facilities? Does it keep its antitrust exemption? Does it keep its tax breaks under the administration bill? Yes or no?

Mr. MEDFORD. Congressman Dingell, let me respond to that first. We don't have subsidies for new and old generation, so we not only don't keep them, we don't have them.

Mr. DINGELL. You get your money cheaper, don't you?

Mr. MEDFORD. We enjoy a benefit associated with the Federal Government.

Mr. DINGELL. You buy your money at Federal rates, so that is a subsidy. Do you keep that under the administration bill? Yes or no; you do or you don't?

Mr. MEDFORD. There would be no change.

Mr. DINGELL. Okay. Now with regard to your anti-trust exemptions, do you keep your anti-trust exemptions?

Mr. MEDFORD. We do not.

Mr. DINGELL. You do not. You lose them all, or do you lose part of them?

Mr. MEDFORD. We lose most of them.

Mr. DINGELL. You lose most of them, but not all of them?

Mr. MEDFORD. Essentially, we lose all except treble damages.

Mr. DINGELL. Okay. Now, do you lose your tax breaks?

Mr. MEDFORD. I am sorry, Congressman?

Mr. DINGELL. Do you lose your tax breaks?

Mr. MEDFORD. No we do not.

Mr. DINGELL. You do not.

Mr. STEARNS. Would the gentleman from Michigan just move the microphone a little closer to him?

Mr. DINGELL. I will sit as close as I can.

Mr. STEARNS. Okay.

Mr. DINGELL. So you don't lose your tax breaks. Now, let us talk about this. We are going to have fair competition, or are we going to have preferential competition, in this bill?

Mr. MEDFORD. We are going to have fair competition.

Mr. DINGELL. Fair competition. You are going to have an antitrust break. You are going to have a tax break. And you are going to continue your subsidies. That is hardly what I call fair, equal competition. You probably would. I understand that if I were sitting in your chair I would come to that conclusion.

Now, let me proceed with the next question. Why should the new legislation give TVA's traditional customers the best of all worlds? They would retain an effective monopoly on particular power source, in combination with options for buying outside the fence. Others who were not so situated would not have that advantage. Why is that a fair resolution of questions associated with deregulation?

Mr. MEDFORD. Customers in the TVA Valley would have the same access to power as customers in other parts the region.

Mr. DINGELL. How about customers in other parts of the country, would they have access to TVA generated power that customers inside the Valley would? The answer to that question is "no," is it not?

Mr. MEDFORD. Their access is limited; that is true.

Mr. DINGELL. That is true. Now, Mr. Medford, the General Accounting Office issued a report last month analyzing TVA's 10-year business plan. This report questioned whether TVA is likely to achieve its goals of reducing its debt and being a position to compete in the market place by 2007. GAO concluded that it is unlikely that the TVA can reduce its debt to the extent planned by 2007.

This means that in the year 2007, if TVA is not able to reduce its debt, it is going to be in the position of having stranded costs. That leaves TVA in an untenable position, if that situation obtains. It means that TVA then, probably, in 2007 will be coming to the Congress for a bail-out to address its problems of stranded costs. Is that not so?

Mr. MEDFORD. That is not so.

Mr. DINGELL. If you don't make your guess, that you are going to dispose of your debt by 2007, you are going to have stranded costs. Isn't that so?

Mr. MEDFORD. No sir. The overriding—I'm sorry.

Mr. DINGELL. If you haven't gotten your debt down, you won't have stranded costs?

Mr. MEDFORD. The overriding goal of the 10-year plan is to ensure that TVA's power costs are consistent with market costs.

Mr. DINGELL. I am talking about stranded costs. I am talking about facilities that are high-cost that are not going to be properly competitive.

Mr. MEDFORD. If the cost of producing power, including capital costs, are competitive at 2007, we will not have stranded investment. The overriding of the 10-year plan——

Mr. DINGELL. If you are successful in that particular. But, if as GAO says, you are not successful, you will then have stranded costs—will you not?

Mr. MEDFORD. The GAO report also observes the fact that the projected cost of power in 2007 is higher, now, than it was when the 10-year plan was created.

Mr. DINGELL. We are spending considerable time.

Mr. STEARNS. The gentleman's time has expired.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. STEARNS. The gentleman from North Carolina, Mr. Burr, is recognized for 5 minutes.

Mr. BURR. Thank you, Mr. Chairman. Does the gentleman from Michigan need additional time? I would be happy to yield to him.

Mr. DINGELL. I thank my good friend. I have some answers; and I have been refused other answers. It is all right. Thank you. The record is quite good.

Mr. BURR. As always, I think the members have gotten a great deal out of your questions. After Congressman Largent and Mr. Dingell's questions, I think many of mine have probably been asked. But let me go further, if I can, Mr. Medford, into the GAO report, and just ask you to comment on a couple of things.

The GAO suggested to TVA that they; one, move quickly to formally update their plan, and two, periodically report to Congress. Is there an attempt to update the 10-year plan at TVA?

Mr. MEDFORD. I envision that at some point we will update the plan, Congressman.

Mr. BURR. Is that this year? Next year? Ten years?

Mr. MEDFORD. We have not set a definite timetable. We have looked at the changes which have occurred since the 10-year plan was created, and concluded that it does not need to be updated at this time.

Mr. BURR. So TVA disagrees with the conclusion of the GAO that you can't hit your debt reduction by 2007. Therefore, GAO has come to the conclusion that you need to move quickly to change your plan to reflect the things that have changed.

Mr. MEDFORD. The GAO report observes a number of things that have changed since the creation of the plan, including, as I mentioned earlier, the increase in the projected cost of power at 2007. We think we are still on track to meet market power at 2007. Therefore, right now, there is no need to do an update of the plan.

Mr. BURR. GAO was also nice enough to put in the report the things that they thought you left out of your consideration: changes to your business that the private sector, if they were to put together a business plan, would certainly take; not the least of which is the environmental regulations that are going to change. Does TVA fall under all those changes?

Mr. MEDFORD. Yes we do, Congressman. And we pointed out in the 10-year plan, itself——

Mr. BURR. Who enforces that? Who enforces the environmental?

Mr. MEDFORD. We are under the same environmental laws as other utilities.

Mr. BURR. So there are Federal entities that currently regulate TVA? If FERC had full jurisdiction over TVA, that would not be

something new—to have a Federal agency who had an accountability or responsibility over this Federal entity?

Mr. MEDFORD. There are other examples. That is true.

Mr. BURR. Okay. Let me ask you, also, they said that TVA's 10-year plans focus on the right issues, but the plan does not fully address the certain costs which would foil TVA's planned objectives. I will ask you about each one of those because, certainly, the GAO thought they were important. The capital costs of increasing generating capacity to meet the growth and demand for power as is now currently planned, instead it provides for meeting the growth and the demand for power by purchasing power from other utilities. Do you take that into account in your current 10-year plan?

Mr. MEDFORD. That is correct. Congressman, that is one of the things that has changed.

Mr. BURR. Okay.

Mr. MEDFORD. Since the creation of the 10-year plan, we have seen an increase in the cost of market power from the power market and the need to provide additional peaking generation.

Mr. BURR. Do you agree with GAO's statement that TVA estimates that its additional costs will total about $1 billion over the remaining life of the plan, and will likely be higher? I take for granted that GAO did not make that up. They got that from TVA.

Mr. MEDFORD. Congressman, that sounds correct, but I would like to respond to that one in writing.

Mr. BURR. I would appreciate it. Mr. Coley, let me ask you. I know Congressman Largent covered taxes. Since North Carolina borders TVA, I think it is a legitimate question for me to ask. If Duke Power, the supplier in Winston-Salem, pays Federal, State and local taxes in our community, under your understanding, what would TVA pay if, in fact, they got the Winston-Salem market?

Mr. COLEY. If you consider just the Winston-Salem market, my company currently pays total taxes—Federal, State and local—of about $36 million a year. If I were taxed on the same basis as TVA, I would pay $9 million a year.

Mr. STEARNS. The gentleman's time has expired.

Mr. BURR. Let me just ask if Mr. Medford could comment on that at all. Is that accurate to your understanding, or is it inaccurate?

Mr. MEDFORD. I can't comment on that. If you would like, I will respond to that one in writing.

Mr. BURR. I would appreciate it. I thank the Chair.

Mr. STEARNS. Yes. The gentleman from Texas, Mr. Hall, is recognized for 5 minutes.

Mr. HALL. Mr. Chairman, thank you. I thank Mr. Markey, who had some questions. I just want to say that I have not been here because there is a mark-up in Science. I have been in and out of here. I do not know what questions have been asked. So with unanimous consent I ask that we place questions in the record and they will answer them. Has that been done?

Mr. STEARNS. Without objection.

Mr. HALL. Bart Gordon is a ranking member on Science and he would have been here, especially, to answer to the three gentlemen from the Tennessee authorities. I am sure he would not exclude Mr. Coley, either, had he been here. He also wants the right to submit questions, in writing.

Mr. STEARNS. Without objection.

Mr. HALL. I yield back. I am going to yield the amount of time I have left to Mr. Markey.

Mr. STEARNS. The gentleman from Massachusetts, do you want Mr. Hall, to have him recognized for 5 minutes on his own time?

Mr. HALL. No, I would rather he use mine. Then he would be a little obligated to me.

Mr. STEARNS. Okay. The gentleman is recognized for the remaining time.

Mr. HALL. He is twice as inquisitive, and half as courteous as I am.

Mr. MARKEY. Thank you, Mr. Chairman. I thank Mr. Hall, very much.

Mr. Medford, a few weeks ago TVA's Chairman Craven Crowell wrote an Op-Ed in the Boston Globe, in which he proffered up advice to Massachusetts that we should, "Make certain that electric utility deregulations end up serving the public interest." We very much appreciate the advice, up in Massachusetts, from TVA as to how we should conduct our deregulation. Because in Massachusetts, we pay 10.5 cents per kilowatt/hour for our electricity—two-thirds more than the 6.3 cents paid by Tennesseans.

This difference is largely attributable to taxpayer subsidies from Massachusetts, and other States, that go down into TVA. These subsidies began more than six decades ago, during the New Deal, to help the impoverished Tennessee Valley Area to improve its living conditions through electrification and flood control.

We don't mind, obviously, in Massachusetts. In the mid-and late-19th century we were able to harness the power of the Merrimac River in Lowell and Lawrence. My grandfather moved to Lawrence to work in the mills, to produce the goods that were made possible by the generation of electricity along the Merrimac River. We appreciate the fact that the Tennessee Valley couldn't quite figure out how to harness their rivers. As a result, in the Thirties, we didn't mind subsidizing other parts of the country who couldn't figure out what we did in the late 19th century.

But now, we are at the beginning of the 21st century, Mr. Medford. Advice which we get that we should model ourselves—we wish we could and reverse that flow of subsidies—upon your system. Our problem, however, is that we don't believe that we can find a politically acceptable way of discontinuing those subsidies. We feel we have an obligation to closely monitor the way in which our subsidies are spent inside of your region.

Your own Inspector General, last year, criticized the agency's six-figure bonuses and secret retirement funds for top executives; non-competitive consulting contracts to cronies of those officials, and expensive building leases with well-connected developers. TVA management offered few responses. Instead, it recently ordered an audit of its own IG; something which, I find, both peculiar and inappropriate in light of TVA's IG's finding that the agency is not well-managed.

What is TVA doing to address the concerns the IG raised about the bonuses and the secret retirement funds for its top executives, as well as the non-competitive consulting contracts?

Mr. MEDFORD. First, let me address executive compensation. The compensation provisions that were mentioned in the IG's assessment are provided to allow TVA to attempt to attract management talent consistent with other similar organizations, like large private utilities. It is a very competitive job market. Without the tools that you mentioned there, we would not be able to attract that kind of talent.

With regard to contracts, we have taken very aggressive measures to ensure that our contracting is competitive, and that we achieve the best possible value in our contracts for TVA and for the customers of TVA power.

Mr. MARKEY. What I don't understand, sir, is that if you are, as you contend in your testimony, a Federal agency—and as a result should be put in a separate category—why the huge salaries? Why are you exempt from all the other rules in terms of the kinds of salaries we can pay our own staff, or what any of the Federal employees can be paid?

Mr. MEDFORD. Let me talk about the TVA nuclear program, as an example. Today, TVA has a nuclear program which, I believe, is second to none. We have one of the highest system capacity factories in the country.

Mr. MARKEY. I guess what I am asking is, why should they get paid more than the Nuclear Regulatory Commission engineers, who in the case of an emergency would have to come in and help your engineers figure out what the problems are? Why should your engineers get paid any more than thousands of people that work at the Nuclear Regulatory Commission who have equal, or superior, credentials?

Mr. STEARNS. The gentleman's time has expired; so that would be his last question, I believe.

Mr. MEDFORD. The answer to that is, if you compare where the TVA nuclear program was in the mid-1980's and where it is today, a big part of the difference between those two is the caliber of nuclear management which has been brought into TVA over that period. The tools that you mentioned were used to attract that caliber of talent and are necessary to attract that caliber of talent.

Mr. MARKEY. Thank you, Mr. Chairman.

Mr. STEARNS. The gentleman from Kentucky, Mr. Whitfield, is recognized for 5 minutes.

Mr. WHITFIELD. Thank you, Mr. Chairman. Mr. Medford, I was looking at wholesale rates in Kentucky in 1998. I noticed that Louisville Gas and Electric rates decreased by 5 percent; KU by 8 percent; Kentucky Power by 12 percent, and TVA rates went up 7 percent—wholesale rates. We hear a lot of comment about low TVA rates—rightfully so, in some situations. But I was wondering, could you explain what happened in 1998 that made that occur?

Mr. MEDFORD. Well, the rate increase that you mentioned was the first rate increase that TVA had imposed in 10 years. We went through a period of 10 years without any wholesale rate increase.

I think you raise a good point, Congressman. Our rates are low. They are not the absolute lowest in the country. That is certainly true. Your State enjoys particularly low-cost power. The Southeast, in general, enjoys low-cost power.

That rate increase that you mentioned, the 7 percent rate increase, was necessary to achieve the goals of the 10-year plan. It was implemented as we announced the 10-year plan. That is the purpose.

Mr. WHITFIELD. Okay. Now, my understanding is in the administration bill TVA would be exempt from any review for its wholesale rates. Is that correct?

Mr. MEDFORD. That is correct.

Mr. WHITFIELD. I would like to ask Mr. Baker; do you feel like there should be some review of those rates?

Mr. BAKER. Yes. The distributors have coalesced that there should be a review of TVA's wholesale rates.

Mr. WHITFIELD. And Mr. Morris, what about you?

Mr. MORRIS. I am in agreement with Mr. Baker.

Mr. WHITFIELD. Okay. Now, do you all think that FERC would be the appropriate agency to do that? Would it be better to have an arbitrator? What is your view on that?

Mr. BAKER. TVPPA's position paper asked for a third-party binding arbitration, and/or judicial review on it. We feel like that given the relationship between TVA and the distributors, that is a better route than full FERC control.

Mr. WHITFIELD. Okay, what about you, Mr. Morris?

Mr. MORRIS. We agree that there should be a third party. We are of the opinion the third party best able to handle those matters is the FERC.

Mr. WHITFIELD. And Mr. Medford, I guess your answer is that you have a board that is appointed by the President, so there would be more regulation if there was a third party review of TVA's wholesale rates. Is that right?

Mr. MEDFORD. We don't see any added value in FERC review of wholesale rates.

Mr. WHITFIELD. Okay. Now, in the administration's bill there is a mandate, by date certain, to go up to 7.5 percent renewables for the production of electrical power. Would that be more costly for TVA if they are mandated to do that, Mr. Medford?

Mr. MEDFORD. It probably would.

Mr. WHITFIELD. Mr. Coley, what about Duke Power?

Mr. COLEY. Yes, it would.

Mr. WHITFIELD. So rates would go up if that mandate stays in there? Would that be correct?

Mr. COLEY. Certainly our costs would go up, yes.

Mr. WHITFIELD. Now, Mr. Coley, what percent of the power that you generate comes from the burning of coal?

Mr. COLEY. Today, approximately 48 percent—45 to 48 percent of all the power Duke Power generates is coal. The remaining is nuclear and hydro.

Mr. WHITFIELD. Okay, nuclear and hydro. Mr. Medford, what about TVA?

Mr. MEDFORD. The approximate percentage is 60 percent.

Mr. WHITFIELD. Sixty percent coal.

Mr. MEDFORD. Sixty percent coal.

Mr. WHITFIELD. Now, I noticed in the administration bill that—while not directly—indirectly, there are some provisions that would make it more difficult and more expensive to burn coal. Do you

think that we should address that issue in this deregulation legislation; to put in some sort of protections to make sure that you are not penalized for using coal? Do any of you have a view on that?

Mr. COLEY. I am not familiar, totally, with that part of the administration's bill. But let me say this: it is becoming increasingly difficult to comply with all the new and changing environmental regulations and continue to burn coal. I would think that we are sufficiently regulated in that regard today. The restrictions and requirements are many; and they are very expensive.

Mr. WHITFIELD. I mean, the reality is we have to use coal to generate electricity in America.

Mr. COLEY. That is correct.

Mr. WHITFIELD. Do you have anything to say on that?

Mr. STEARNS. The gentleman's time has expired. Do you want to just answer that last question?

Mr. BAKER. I don't think the distributors feel that environmental legislation, as included in the bill, is appropriate for a deregulation bill.

Mr. WHITFIELD. Do not feel it is appropriate?

Mr. BAKER. Right.

Mr. STEARNS. I recognize myself for 5 minutes.

Mr. Medford, the question is directed to you. Are you confident of TVA's ability to compete with other electric suppliers? If so, why hold your wholesale customers to the 10-year notice requirement? Why not release them from their contracts after they pay their stranded costs?

Mr. MEDFORD. Well, first let me observe that we have customers today—in fact the majority of our customers—who have less than a 10-year obligation under the contract. Their current obligation is about 8.5 years. In addition to that, we have supported two approaches to legislation: the TVPPA/TVA agreement and the administration's TVA title, which provide for shorter periods than the 10-year contracts.

Mr. STEARNS. Mr. Morris, the administration bill penalizes TVA wholesale customers that buy from other electric suppliers, by allowing TVA to sell at retail in their service areas. What is the purpose of this provision? You said you were willing to pay stranded costs, so that can't be the reason. It seems the only reason for that provision is to discourage TVA's wholesale customers from leaving its system.

Mr. MORRIS. I would agree the question is that it would represent an issue, or exert pressure, on a TVA customer inclined to leave will all, or part, of its load. So I would agree with your question.

Mr. STEARNS. Your testimony expressed a concern about liability for any future imprudent costs incurred by TVA. What is the best way to ensure TVA does not incur new stranded costs? Should TVA be able to acquire new generation resources at the taxpayers' risk? Should TVA be limited to acquiring new resources only if it has contracts where wholesale purchasers assume the risks?

Mr. MORRIS. I think those are good suggestions. Our concern is that, while we don't want to constrain TVA, we do want to have some assurance that the decisions that are being made are decisions over which there is some oversight. We have concerns that

absent FERC, or some other third-party review, perhaps there will not be the oversight necessary to ensure that those decisions are prudent, and don't have a negative impact on our customers.

Mr. STEARNS. You testified that amending Federal law to eliminate the legal barriers to wholesale competition in the Tennessee Valley will not create wholesale competition in the Valley, unless Congress also amends TVA's contracts. You also say you are prepared to pay your share of TVA's stranded costs. Why won't TVA let you out of your contract after you pay your stranded costs?

Mr. MORRIS. Well, I think that the issue of the contract and its current, rolling, 10-year term is one that is basically an issue of negotiation leverage. The why is basically an example of the disparity in negotiation leverage, or power. We believe that in order for us to have access to low-cost power and the benefits of wholesale electric deregulation is that we have to have the ability to exit those contracts sooner than 10 years.

Mr. STEARNS. Even if Congress opened up TVA's transmission system, and addressed the contract issue, TVA has market power in the region, since it controls virtually all generation in the Tennessee Valley. Should FERC regulate TVA's wholesale sales in the region, or should TVA continue to have unilateral discretion to set the wholesale rates under the TVA Act?

Mr. MORRIS. Our position is, and has been, that FERC oversight of TVA's wholesale rates would be appropriate and would benefit our customers.

Mr. STEARNS. My time has run out. I would ask members who would like to ask additional question to submit those in writing for the panel. So ordered, without objection.

I would like to thank all of you for your patience and taking of your valuable time to come here this morning. We appreciate your comments. I would like to, now, ask the third panel to step forward.

Mr. STEARNS. I would like the third panel to sit down. Those folks that are not involved please leave the room.

Let me welcome the third panel. Mr. Mazur, from the U.S. Department of Energy; Dr. Bradley Eldredge, representing the Public Power Council; Mr. John Amos, from Reynolds Metal Company; Mr. John Savage, representing the Northwest Energy Review Transition Board; Mr. James Litchfield, from Litchfield Consulting Group, and Mr. Shawn Cantrell, from Friends of the Earth.

I think that what we will do is start from left and just move across. So gentlemen, you are welcome to provide an opening statement. You are recognized for 5 minutes. I would encourage all of you to give a synopsis of your opening statement if you could. Mr. Mazur.

STATEMENTS OF MARK MAZUR, ACTING DIRECTOR, OFFICE OF POLICY, U.S. DEPARTMENT OF ENERGY; ACCOMPANIED BY JACK ROBERTSON, DEPUTY ADMINISTRATOR, BONNEVILLE POWER ADMINISTRATION; JOHN SAVAGE, ADMINISTRATOR, OREGON OFFICE OF ENERGY, REPRESENTING NORTHWEST ENERGY REVIEW TRANSITION BOARD; H. BRADLEY ELDREDGE, COUNCIL MEMBER, CITY OF IDAHO FALLS, REPRESENTING PUBLIC POWER COUNCIL; JAMES LITCHFIELD, PRESIDENT, LITCHFIELD CONSULTING GROUP; JOHN AMOS, GENERAL MANAGER, ENERGY AND HEDGING, REYNOLDS METALS COMPANY; AND SHAWN CANTRELL, NORTHWEST REGIONAL DIRECTOR, FRIENDS OF THE EARTH

Mr. MAZUR. Thank you, Mr. Chairman. My name is Mark Mazur and I am Acting Director for the Office of Policy at the Department of Energy.

Mr. STEARNS. Mark, hold up just a second. We had a few people just leaving, here. The door will be closed and it will be a little more quiet, so we can hear your opening statement. If the staff would help me out by closing the door? All right, you may continue.

Mr. MAZUR. Sitting behind me today is Jack Robertson, Deputy Administrator for Bonneville Power Administration. The Department welcomes the opportunity to testify today about the role of Federal utilities in competitive electricity markets.

On April 15, Secretary Richardson transmitted the Clinton administration's proposed Comprehensive Electricity Competition Act to the House and the Senate. This legislation contains the administration's vision for restructured electric industry. We believe that consumer choice and competition among power suppliers will lower electricity rates; make American business more competitive; spur the innovation of new products and services, and reduce the emissions of traditional air pollutants and greenhouse gases.

Mr. Chairman, we are pleased that the subcommittee is holding hearings on electric restructuring. While we recognize States are leading the way, Federal legislation is essential to complement the States' efforts, and address issues which can only be resolved by the Federal Government.

I understand that Secretary Richardson will be testifying on the administration's proposal as whole, at a later time. So today I want to limit my testimony to the Department's views on the role of Federal utilities in a restructured environment.

The four power marketing administrations: Bonneville Power Administration, Western Area Power Administration, Southwestern Power Administration, and Southeastern Power Administration, which are subject to Department of Energy oversight, and the Tennessee Valley Authority, which is generally self-regulated, will continue to perform their important functions, even after restructuring. However, the administration supports certain statutory changes to allow competition to properly develop in the regions served by these entities.

My testimony today will focus on the regulatory changes which the administration believes are necessary to ensure that federally owned transmission facilities promote competitive markets, and also on the role of power sales by the PMAs and TVA.

With respect to transmission, the administration believes that one of the most critical elements of competitive wholesale and retail electric markets is an open, efficient, reliable interstate transmission system. Under current law, most cooperative and municipal utilities, as well as the TVA and PMAs are exempt from most Federal Power Act regulation of transmission services. We believe that it is preferable that transmission services provided by all utilities, whether publicly or privately owned, are subject to similar rules and requirements.

The administration's proposed legislation, however, recognizes the unique structure of Federal utilities that require slightly different regulatory treatment than that accorded to other utilities. Our proposal would require FERC, in setting transmission rates for TVA and the PMAs, to ensure amounts collected are sufficient to cover transmission costs, and to take statutory and regulatory requirements into account in regulating these rates.

We believe it is important to recognize that the standards pursuant to which Bonneville and the other PMAs have been setting transmission rates differ from Federal Power Act standards. It is possible that in a restructured environment some PMA customers will see higher transmission costs, and some will see lower transmission costs, under a revised regulatory system. Consistent with FERC practice, we believe that any such increases should be phased in over a reasonable period, if implementing them all at once would be problematic.

Bonneville and, to a lesser extent, the other PMAs are also faced with having to pay the cost for future fish and wildlife remediation programs associated with Federal dams. These costs are generally recovered as part of the power rates charged by the PMAs. Under most estimates of future market conditions, the PMAs are expected to be able to recoup all their generation costs in power rates.

However, if market rates are less than PMA cost-based rates, the administration has proposed that FERC be given authority to impose a limited transmission surcharge, applied on a competitively neutral basis, to the extent BPA and the other PMAs are unable to recover sufficient amounts in generation rates to cover these costs. This surcharge would be treated as a loan from customers that would be paid back when PMA power costs fall below market rates.

With respect to power sales, although the rates for most power sales would be established by interaction of supply and demand in the market, subsequent to restructuring there will be a role for cost-based preference power. Preference power has helped to provide affordable electricity to developing areas in America. While we expect the benefits of competition to reach all areas of the country, the Department is concerned that a shift from cost-based to market-based rate making for PMA power could harm customers in the regions currently served by PMAs.

Some critics contend that preference customers of PMAs have an unfair advantage in a competitive marketplace, because they are able to take relatively low-cost power that they receive from the PMAs and resell it in the competitive marketplace. However, legal and contractual restrictions prevent preference power customers from reselling power generated at a Federal dam to a customer lo-

cated outside the preference power customer's service territory. The Department intends to ensure the use of preference power meets all legislative and contractual requirements.

Mr. STEARNS. The gentleman's time has expired. Is it possible that you could summarize?

Mr. MAZUR. Sure. Mr. Chairman, we believe the approach outlined in the administration's legislation goes a long way to providing a competitive environment in the areas served by Federal utilities that is appropriate for the 21st century. I will be happy to answer any questions you or the other members may have.

[The prepared statement of Mark Mazur follows:]

PREPARED STATEMENT OF MARK MAZUR, ACTING DIRECTOR, OFFICE OF POLICY, U.S. DEPARTMENT OF ENERGY

INTRODUCTION

Good morning, Mr. Chairman and members of the Subcommittee. My name is Mark Mazur and I am the Acting Director of the Office of Policy at the Department of Energy. The Department welcomes the opportunity to testify today about the role of Federal utilities in competitive electric markets.

On April 15, Secretary Richardson transmitted the Clinton Administration's proposed Comprehensive Electricity Competition Act to the House and the Senate. This legislation contains the Administration's vision for a restructured electric industry. We believe that consumer choice and competition among power suppliers will (1) lower electricity rates, (2) make American businesses more competitive, (3) spur the innovation of new products and services and (4) reduce the emissions of traditional air pollutants and greenhouse gases.

Mr. Chairman, we are pleased that the Subcommittee on Energy and Power is holding hearings on electric restructuring. Twenty-one states either have implemented or are in the process of implementing restructuring programs. A number of other states are considering similar action. While the states are and should be leading the way on retail competition, Federal legislation is essential to complement the states' efforts and address those issues which can only be resolved by the Federal government. The Administration believes that restructuring legislation is needed sooner, rather than later, and we want to work with you and the members of your Committee on a bipartisan basis to get the job done. I understand that Secretary Richardson will be testifying on the Administration's proposal, as a whole, at a later time. I will limit my testimony today to the Department's views on the role of Federal utilities in a restructured environment.

The four Federal Power Marketing Administrations (PMAs)—the Bonneville Power Administration (BPA), the Western Area Power Administration (WAPA), the Southwestern Power Administration (SWPA) and the Southeastern Power Administration (SEPA)—which are subject to Department of Energy oversight, and the Tennessee Valley Authority (TVA), which is generally self regulated, will continue to perform their important functions, even after restructuring. However, the Administration supports certain statutory changes to allow for competition to properly develop in the regions served by TVA and the PMAs.

After providing some brief background information on the PMAs and TVA, my testimony will focus on the regulatory changes which the Administration believes are necessary to ensure that Federally-owned transmission facilities promote competitive markets. Thereafter, the testimony will provide the Administration's views on the role of the PMAs and TVA in the sale of power subsequent to industry restructuring.

BACKGROUND

Bonneville

The Bonneville Power Administration markets wholesale [1] electrical power and operates and markets transmission services in the Pacific Northwest. The power comes from 29 Federal dams, one non-federal nuclear plant, and various renewable resources. BPA serves a 300,000 square mile area including Oregon, Washington, Idaho, Western Montana, and parts of Northern California, Nevada, Utah, and Wyo-

[1] BPA also sells retail power to 15 Direct Service Industrial (DSI) customers as provided by statute. 16 U.S.C. 839c(d)(2)(A).

ming. In addition, Bonneville's transmission system exceeds 15,000 circuit miles, provides more than three-fourths of the region's high-voltage transmission capacity, and includes major transmission links with Canada and other regions within the United States.

Bonneville's rates currently are developed through a formal regional process pursuant to certain ratemaking standards and filed with the Federal Energy Regulatory Commission (FERC) for approval or remand under those standards. One of BPA's primary duties is to establish power and transmission rates to repay "the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs."[2] These other costs include (1) amounts attributable to efforts to mitigate harm to and enhance fish and wildlife populations in the Columbia River Basin (BPA has pledged to spend over $400 million annually on this effort) and (2) over $7 billion in Washington Public Power Supply System and other Bonneville-backed debt. At the end of FY 1998, Bonneville's outstanding Treasury repayment obligations was approximately $6.6 billion.

Bonneville is obligated by statute to sell power to the preference customers—public bodies and electric cooperatives—as well as the residential and small farm customers of investor-owned utilities in the Pacific Northwest. BPA also has been selling power to the DSIs, primarily aluminum companies, in the Northwest. BPA may also sell surplus outside the region at market prices.

Other PMAs

The remaining three power marketing administrations all market power generated at dams constructed pursuant to the Reclamation Acts and the Flood Control Act of 1944. WAPA markets approximately 10,000 MW of hydro power capacity from Federal dams located in the Colorado, Missouri and California's Central Valley River basins to parts of 15 states. WAPA also owns and operates transmission lines over 16,000 miles across the West. SWPA markets 2,000 MW of capacity from Federal dams located in Oklahoma, Arkansas, Missouri and Texas to parts of six states and also owns and operates almost 1,400 miles of transmission. SEPA markets a little more than 3,000 MW of capacity from dams located throughout the Southeast to customers in parts of nine states. SEPA owns no transmission facilities.

As marketers of Federal power, WAPA, SWPA and SEPA must satisfy certain statutory and regulatory requirements. They must give a preference in the sale of power to municipalities and other public bodies or agencies, and to electric cooperatives. Once the appropriate Administrator develops power or transmission rates consistent with governing statutes and regulations, the Secretary approves the rates on an interim basis, and FERC conducts a review of the rates to determine whether they are the lowest possible to customers consistent with sound business principles and whether the revenues generated by the rates are sufficient to recover the costs of producing or transmitting the electric energy and to pay back a significant portion of the Federal investment in the dams which provide the hydro power.

Tennessee Valley Authority

The TVA Act of 1933 requires TVA to provide electric power, flood control, navigational control, agricultural and industrial development and other services to virtually all of Tennessee and parts of six surrounding states. In 1959 Congress amended the TVA Act to create the so-called "TVA fence" by limiting TVA to sales of electricity to its own wholesale requirements customers and certain industrial retail customers inside its service territory and to short-term economy exchanges with the fourteen surrounding utilities with whom it already did business. While TVA's power sales outside the TVA region are limited, contractual arrangements between TVA and its distribution customers and certain provisions in the Federal Power Act essentially restrict other utilities from selling power in the TVA region.

TVA owns 28,000 MW of generation capacity[3] and owns and controls 17,000 miles of transmission in the TVA region and supplies power to 159 municipal and cooperative retail distributors in its service territory. Unlike the PMAs, TVA meets all of the power needs of the region it serves. The distributors purchase power pursuant to contracts that require the distributors to acquire all their power from TVA. These contracts also give TVA the right to set retail rates and a number contain ten-year notice provisions for termination. TVA also sells power directly to 68 large industrial and Federal customers.

TVA is governed by a three member board of directors, appointed by the President and confirmed by the Senate. TVA is not subject to either Federal or State regu-

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[2] 16 U.S.C. 839e(a)(2)(A).

[3] TVA's generation mix is approximately 11% hydroelectric, 28% nuclear and 61% fossil fuel.

latory commission jurisdiction, except to limited Federal Power Act review for energy transmitted through the TVA service territory but not consumed inside the territory. In addition, TVA, as a Federal agency, is exempt from the antitrust laws.

TRANSMISSION

The Administration believes that one of the most critical elements of competitive wholesale and retail electric markets is an open, efficient and reliable interstate transmission system. Under current law, most cooperative and municipal utilities, as well as TVA and the PMAs, are exempt from most Federal Power Act regulation of transmission services. Although the reciprocity provisions of FERC Order No. 888 address, to some extent, non-jurisdictional transmission entities, we believe it is preferable that transmission services provided by all utilities, whether publicly or privately owned, are subject to similar rules and requirements.

The Administration's proposed comprehensive electricity competition legislation would subject transmission facilities owned by municipal, cooperative and all Federal utilities, including the PMAs[4] and TVA to Federal Power Act review. In addition, we also would authorize FERC to require these utilities to turn over operational control of these transmission facilities to an independent regional system operator in order to ensure that competitive markets adequately develop and flourish. For example, Bonneville owns 75 percent of all the high voltage transmission lines in the Pacific Northwest. If access to BPA's transmission facilities is not provided to competitors on a nondiscriminatory basis and efficiently priced, competition can not adequately develop in the Northwest.

The Administration's proposed legislation does, however, recognize that the unique structure of the Federal utilities requires slightly different regulatory treatment than that accorded other utilities. For instance, TVA and the PMAs are obligated by statute to recover a sufficient amount in rates to offset their related costs, including debt repayment. Our proposal would require FERC, in setting transmission rates for TVA and the PMAs, to ensure that amounts collected are sufficient to cover transmission costs. In addition, the PMAs operate within a variety of other statutory and regulatory requirements. For example, operations of dams may reflect environmental concerns that could impact transmission services. The Administration's legislation would require FERC to take these constraints into account in regulating the rates for transmission services.

We also believe it is important to recognize that the standards pursuant to which Bonneville and the other PMAs have been setting transmission rates differ with Federal Power Act standards. It is possible that some PMA customers will see higher transmission costs and some will have their costs reduced under the revised regulatory system. Consistent with FERC practice, we believe that increases should be phased in over a reasonable period if implementing them all at once would be problematic.

Bonneville and, to a lesser extent, the other PMAs, are also faced with the problem of having to pay the costs of future fish and wildlife remediation programs associated with the Federal dams. These costs are generally recovered as part of the power rates charged by the PMAs and, under most estimates of future market conditions, the PMAs are expected to be able to recoup all of their generation costs in power rates. However, if market rates are equal to or are less than PMA cost-based rates, an alternative cost recovery mechanism would be needed to avoid shifting the responsibility for payment of these costs to the United States Treasury. The Administration has proposed that FERC be given the authority to approve a limited transmission surcharge mechanism and that surcharge would be applied on a competitively neutral basis to the extent BPA and the other PMAs are unable to recover sufficient amounts in generation rates to pay all the costs attributable to the power side of operations. This surcharge would be treated as a loan from customers which would be paid back when power costs fall below market rates.

POWER SALES

PMA Preference Power

Although the rates for most power sales will be established by the market subsequent to restructuring, there will still be a role for cost-based preference power. Preference power has helped to provide affordable electricity to developing areas of America. While we expect the benefits of competition to reach all regions of the country, the Department is concerned that a sudden shift from cost-based to mar-

[4] Since the Southeastern Power Administration does not own transmission facilities, the provisions of the Administration's legislation regarding transmission do not apply to SEPA.

ket-based ratemaking for PMA power could have a deleterious effect on consumers in the regions served by the PMAs.

In addition, the amount of power sold by WAPA, SWPA and SEPA in comparison to total power sales in the regions they serve is negligible and will not impact competition. While Bonneville's role in the Northwest power market is much more substantial, the fact is that the BPA's resources are finite. As electricity demand in the region continues to grow, the role of new suppliers will increase and competition should flourish, especially if the Administration's proposed legislative changes to the Bonneville transmission system are made.

Mr. Chairman, some critics contend that the preference customers of the PMAs will have an unfair advantage in a competitive marketplace because they will be able to take the relatively low-priced power they receive from the PMAs and turn around and sell it in the competitive marketplace. However, there are both legal and contractual restrictions that prevent a preference power customer from reselling power generated at a Federal dam to a consumer located outside of the preference power customer's service territory. The Department intends to continue to be vigilant to ensure that the use of preference power adheres to legislative and contractual requirements.

TVA's Power Sales Activities

Certain provisions of TVA's contracts with the municipal and cooperative distributors and Federal law can act as barriers to competition. Even if the states and the municipal and cooperative utilities were to provide their consumers the opportunity to choose among competing power suppliers, these barriers could prevent meaningful competition from occurring. As a result, the Administration's comprehensive electricity restructuring legislation includes several provisions designed to break down these barriers to allow for vigorous competition to take place in the Tennessee Valley. These provisions draw heavily on the work of the Tennessee Valley Electric System Advisory Committee, which was commissioned by the Department in November 1997 to provide advice through a regional consensus building process.

Consistent with the target date for retail competition of January 1, 2003, the Administration's bill would remove the statutory and contractual obstacles that currently prevent other utilities from selling power in the Tennessee Valley. We have proposed that the Federal Power Act be amended to provide FERC with the authority to order TVA to provide transmission access to generators and marketers seeking to sell power inside the TVA region. In addition, TVA would be required to renegotiate its existing full-requirements contracts with its distributor customers within one year of the date of enactment in order to allow the distributors to purchase power from other sources after January 1, 2003, and to shorten the contract terms.

Because TVA can expect to lose some load as a result of these changes, the Administration also is proposing that TVA be permitted to mitigate its stranded costs through power sales outside the TVA region. To the extent TVA is not able to fully mitigate its stranded costs with power sales outside the region, FERC would be authorized to permit TVA to recover its stranded costs from departing customers until October 1, 2007.

The Administration recognizes that some are opposed to allowing TVA to acquire new customers by selling power outside the TVA region. We believe, however, that it is important that TVA be permitted to mitigate stranded costs by selling excess power and capacity. Our proposal contains several important restrictions on TVA's ability to compete for customers outside the Tennessee Valley. First, TVA would not be able to add new capacity to serve customers outside of the Tennessee Valley because the TVA Act only authorizes TVA to build new capacity to meet the power needs of the Tennessee Valley. In addition, TVA would, for the first time, be subjected to injunctive penalties under the antitrust laws in order to help level the playing field between TVA and potential competitors. Furthermore, TVA would be prohibited from competing for retail customers outside of the TVA region. In this regard, we believe the proposed legislation appropriately balances the concerns of TVA and other market participants, while promoting a competitive market in the TVA region and in other regions of the country.

CONCLUSION

Mr. Chairman, we believe that our approach, as outlined in the Administration's proposed legislation, goes a long way toward providing a competitive environment in the areas served by the Federal utilities that is appropriate for the 21st century. I would be glad to answer any questions which you or the other Committee members may have.

Mr. STEARNS. I thank the gentleman.

Mr. Savage, you are recognized for 5 minutes.

STATEMENT OF JOHN SAVAGE

Mr. SAVAGE. Thank you, Mr. Chairman. For the record, my name is John Savage. I am the Administrator of the Oregon Office of Energy. I also represent Oregon Governor, John Kitzhaber, on the Northwest Energy Review Transition Board. This board is made up of four persons represented by the Governors of the four northwest States. Its charge is to oversee implementation of recommendations for changes to the Northwest power system, developed in what was called the comprehensive review. This was a year-long, four-state effort sponsored by the Northwest Governors. The comprehensive review of recommendations, among other issues, addressed the issue of this hearing, which is the role of Bonneville in a competitive market place.

Let me quickly go to the specific questions that I was asked to address, particularly as they pertain to Bonneville. First, should the transmission systems of Bonneville be regulated in a manner comparable to that of other power line owners? The comprehensive review said, yes, they should. Bonneville operates the vast majority of the region's transmission lines. As owner, it sets rates, terms and conditions for use of those lines. I think, consistent with the move to more competitive wholesale power markets, it should operate under the same operating rules and regulations—with some exceptions—as other power line owners.

We have been working with Northwest groups to identify specific changes to the Federal Power Act and the other statutes that Bonneville operates to achieve this comparable regulation. I should point out that there does remain disagreements within the region on exactly how to extend FERC jurisdiction.

Second, is there a need to address stranded costs for Bonneville? Yes, the comprehensive review said. Bonneville does not have stranded costs, I think, in a conventional sense. It does face significant revenue and cost uncertainties. For example, the variations in the amount of hydropower generated translates into swings of revenues of several hundred million dollars a year. As a result, the comprehensive review recommended that a fair, effective back-stop emergency funding mechanism be created, so that we ensure that we meet all of our costs.

Third, should the ability of Bonneville to acquire new resources, particularly new power plants, be limited? Today Bonneville has the authority to acquire the output of new power plants to meet the growing demands in the Northwest. But because of the inherent financial risks associated with major acquisition, the comprehensive review that that role be curbed, and that Bonneville limit its acquisitions to those cases where a customer takes on the financial risk of those acquisitions.

Fourth, should Bonneville sell to retail loads? No. The comprehensive review, again, recommended that Bonneville not sell directly to retail loads, other than to existing industrial customers; or, if it is done, through an intermediary. I think one of the central theme of the Governors' panel was that Bonneville should not be an active, aggressive player in the wholesale power market; but,

rather, return to its historic role of marketing power generated from the Columbia River dams.

Fifth, how can it be ensured that Bonneville recovers all of its costs? I should mention that Bonneville sets its rates to cover all its costs, including its debts. At issue is what to do in the unlikely event of significant revenue shortfalls, or extraordinary costs increases, such as unforeseen fish recovery costs.

We proposed to the Transition Board a staged approach consisting of progressively strong action triggered by the financial reserve levels of Bonneville. First stage is to draw down their financial reserves and to use statutory credits that it can apply for its fish and wildlife expenditures. If that does not prove sufficient, then to institute cost controls and pare whatever necessary expenses that it can. From there, to apply a temporary adjustment in power rates. And then, only as a last resort, impose a temporary hike in transmission rates that are subject to review and approval by FERC.

I will finish up. Sixth, is legislation required? Yes, I think, specifically with regard to the regulation of transmission. We are finalizing a report on our work that we will submit to the committee for its consideration. Thank you.

[The prepared statement of John Savage follows:]

PREPARED STATEMENT OF JOHN SAVAGE, ADMINISTRATOR, OREGON OFFICE OF ENERGY, ON BEHALF OF NORTHWEST ENERGY REVIEW TRANSITION BOARD

Mr. Chairman and members of the subcommittee, my name is John Savage and I am Director of the Oregon Office of Energy. I also represent Oregon Governor John Kitzhaber on the Northwest Energy Review Transition Board. The Transition Board is comprised of four people representing the governors of the four Pacific Northwest states. Serving with me on the Transition Board are Todd Maddock, representing Governor Kempthorne of Idaho; John Etchart, representing Governor Racicot of Montana; and Tom Karier, Governor Locke of Washington state's representative. All three are current members of the Northwest Power Planning Council, and Mr. Maddock is the current chairman of the Council. The Transition Board is charged with overseeing the implementation of recommendations for the Northwest power system made by a task force of energy experts convened by the Governors.

The topic of this hearing is critical to the Northwest states because of the central role the Bonneville Power Administration plays in the Northwest power system. It supplies, on average, 40 percent of the power consumed in the region. It also owns and operates as much as 75 percent of region's high-voltage transmission. Bonneville markets most of the region's low-cost hydroelectric power. Much of it is generated from the Columbia River—a vast, international, multi-purpose public resource. Bonneville is also responsible for funding efforts to restore fish and wildlife populations in the Columbia River Basin. The decisions it makes and those made about it affect every facet of the Northwest power market.

The advent of a more competitive electricity industry raises a number of complex questions about Bonneville's future. Bonneville's responsibilities under legislation such as the Northwest Power Act and the Endangered Species Act pose challenges to the agency in the new competitive environment. In addition, Bonneville's ownership of most of the region's high-voltage transmission raises questions about the role of a federal agency in a competitive market.

THE COMPREHENSIVE REVIEW OF THE NORTHWEST ENERGY SYSTEM

In 1996, the Governors of Idaho, Montana, Oregon and Washington, acting in response to the changes that were sweeping the electricity marketplace, convened a task force of energy experts representing the major stakeholders in the region to comprehensively review the Northwest power system and make recommendations for change. This effort was known as the Comprehensive Review of the Northwest Energy System. Each governor had a non-voting representative on the Steering

Committee to make certain the public was educated about and involved in the Comprehensive Review. In establishing the Review, the governors said:

> "The goal of this review is to develop, through a public process, recommendations for changes in the institutional structure of the region's electric utility industry. These changes should be designed to protect the region's natural resources and distribute equitably the costs and benefits of a more competitive marketplace, while at the same time assuring the region of an adequate, efficient, economical and reliable power system."

The Steering Committee held 30 daylong meetings. In addition, almost 400 people were involved in more than 100 meetings of various work groups reporting to the Steering Committee. Hundreds of citizens attended the 10 public hearings that were held throughout the region on the Committee's draft report. More than 700 written comments were received. The Steering Committee's recommendations are a product of that work.

The intent of the Review was to help the Pacific Northwest address the electric utility industry's transition from regulation to competition and, in particular, provide guidance on the appropriate role of the federal power and transmission assets in a competitive utility environment.

At the time of the Comprehensive Review, Bonneville's ability to recover sufficient revenues to enable it to meet its financial obligations was very much in doubt. As a result of aggressive cost control and improving markets, it now appears likely that Bonneville will be financially healthy at least through the upcoming 2002-2006 rate period. However, the volatility of power markets and the uncertainties surrounding Bonneville's fish and wildlife mitigation and recovery obligations could quickly change that outlook. Moreover, the role of federally owned transmission in a competitive power market remains an issue.

Recommendations regarding the Bonneville Power Administration

The Comprehensive Review's recommendations are wide-ranging, encompassing not only the Bonneville Power Administration but also issues such as retail competition and sustaining public purposes, like investment in conservation and renewable resources. I would like to summarize the main features of the Steering Committee's recommendations that are of primary interest to you, those pertaining to the Bonneville Power Administration.

Federal Power Marketing: the Bonneville Power Administration

The Steering Committee's goals for federal power marketing were to: 1) ensure repayment of the debt to the U.S. Treasury with a greater probability than currently exists while not compromising the security or tax-exempt status of Bonneville's third-party debt; and 2) align the benefits and risks of access to existing federal power; and 3) retain the long-term benefits of the system for the region.

For federal power sales after 2001, the Steering Committee recommended that federal power be distributed based on a subscription process. Subscribers would purchase specified amounts of federal power at cost, with priority rights going to public agencies, followed by the residential customers of investor-owned utilities and direct service industries.

The Federal Role in a Competitive Marketplace

The subscription process should have the effect of successfully marketing much, if not all, of the firm power available from Bonneville on an intermediate-term basis "approximately five years. The fact that the recommendations call for most of Bonneville's power to be subscribed at cost would limit Bonneville's market role. In short, the Steering Committee recommended that to the extent consistent with its obligation to repay Treasury, Bonneville should return to its historic role of marketing power generated by the Federal Columbia River Power System, rather than becoming an aggressive marketer of products and services in the emerging competitive power market.

In addition, to limit taxpayer and subscriber risk, the Steering Committee recommended that Bonneville not acquire new resources to serve its customers' load growth except on a direct bilateral basis where the customer takes on the risk of the acquisition. Similarly, the Steering Committee proposed that Bonneville should not sell directly to new retail loads, beyond its existing direct service industry loads, although it may sell through intermediaries whose transactions would be subject to state or local jurisdiction.

Bonneville and Fish and Wildlife Costs

I would like to highlight one issue related to the subscription proposal that likely will be of concern to the committee. That issue is funding for fish and wildlife mitigation efforts. The governors specifically asked the Review Steering Committee to

consider power system issues and to avoid making recommendations regarding fish and wildlife recovery plans or specific recovery measures.

In accordance with the governors' guidance, the Steering Committee specifically recognized Bonneville's existing fish and wildlife obligations, and stated that none of its recommendations should affect existing trust obligations or treaty rights. The Steering Committee further recognized that the Northwest would need to provide its appropriate share of the required fish and wildlife funding.

Contingent Cost Recovery

The Review also recognized, however, that Bonneville is subject to a great deal of risk. Consequently, it recommended that a mechanism be developed to permit Bonneville to recover otherwise unrecoverable costs, should they arise. This is necessary to ensure repayment of the debt to the U.S. Treasury with a greater probability than currently exists, while not compromising the security of Bonneville's third-party debt, which is primarily comprised of Washington Public Power Supply System bonds. At the same time, this mechanism must also attempt to align the benefits and risks of access to federal power.

Transmission

If there is to be effective competition among generators, the Steering Committee found that transmission facilities should be operated independently of generation ownership. The Steering Committee determined that the independent operation of Bonneville's transmission facilities is particularly important to effective competition among generators in the Northwest because Bonneville's facilities make up such a large part of the regional transmission system. To ensure this independence, the Steering Committee recommended that, if feasible, Bonneville be legally separated into two organizations—a power marketing organization to market the power from the federal power system and a transmission organization to carry out the transmission functions. The critical element in separation of these functions is that it not jeopardize or diminish the legal obligation and ability of Bonneville to meet fish and wildlife and other obligations. The Review also recommended that Bonneville be able to participate in a Regional Transmission Organization.

Legislation would be required to accomplish these recommendations. In the meantime, the Steering Committee recommended that Bonneville move quickly to achieve as much administrative separation as possible. It was also recommended that Bonneville's transmission be subject to regulation by the Federal Energy Regulatory Commission equivalent to the regulation of the transmission assets of investor-owned utilities.

Columbia River System Governance

The Steering Committee was asked by the Northwest governors to focus on the restructuring of the electricity system and to address the financial stability of the federal power system. However, it fully recognized that there are other important, related issues and decisions, including those affecting fish and wildlife, that must be resolved before a truly comprehensive package can be achieved.

In its recommendations, the Steering Committee concluded that the Northwest cannot expect to achieve both the degree of cost stability the electricity industry requires to maintain the benefits of the Columbia River power system for the region and achieve sustainable fish and wildlife restoration unless predictability, accountability and effective governance for the fish and wildlife interests of the river are ensured. In addition, it was found that an effective conclusion of the energy-system restructuring effort in the Northwest will not be possible without an improved system of river governance.

Through its public process, the Steering Committee found that until governance deliberations move forward through a government-to-government consultation among federal, state and tribal authorities, the prospects for a consensus on the response to utility restructuring will be diminished and controversial. The Steering Committee recommended that the governors initiate a broadly based discussion of improvements in river system governance that would provide more effective decision-making for this complex ecosystem and all of its competing uses. The governors, through a process that I will describe later, are attempting to develop a means to do so.

That completes my summary of the Steering Committee's recommendations. Now, I would like to move from the recommendations to implementation, and to the Northwest governors' current efforts.

As mentioned earlier, the governors appointed representatives to the Northwest Energy Transition Board to oversee implementation of the Review Steering Committee's recommendations. As with the Review, staff from the Northwest Power Planning Council are providing technical and logistical support to the Board.

Since its inception, the Transition Board has convened public meetings on a frequent basis throughout the region. In addition, two working groups were created comprised of Bonneville customers, Bonneville staff, and other interested parties. One group's function was to develop a process to carry out the federal power marketing subscription. A second group was created to address the issues surrounding the separation of Bonneville's transmission and marketing functions, subjecting Bonneville's transmission to FERC regulation, and developing an emergency cost recovery mechanism.

I would like to discuss briefly the progress the Transition Board is making on the topics of transmission and contingent cost recovery. The Transition Board has focused on these issues because they required regional leadership and federal legislation. I will also give you a brief update on the Governors' efforts to address river governance.

Transmission

The Transition Board has focused most of its attention on transmission, an area that will clearly require legislation to resolve. Moreover, ensuring that power suppliers have fair and open access to transmission lines is an essential condition for an efficient wholesale power market. One of the clearest ways that Bonneville can be adapted to the competitive environment is to ensure that its transmission satisfies that condition.

The Comprehensive Review called for legal separation of Bonneville's transmission functions from its power functions, FERC regulation of its transmission, and the ability for Bonneville to participate in a regional transmission organization (RTO). The recommendations are intended to promote effective competition, improve system reliability. At the same time, the Review established a goal that such separation not jeopardize or diminish the legal authority and ability of Bonneville to meet fish and wildlife and other obligations.

The issues regarding legal separation and FERC jurisdiction are complex. This is particularly so because separation has implications for the security of Bonneville's third-party debt that need to be addressed carefully to ensure that the security is not impaired. After careful study, the regional working group that examined the legal and other issues related to transmission separation concluded that the perceived risks to the security of Bonneville's third party debt are such as to make actual legal separation risky. Moreover, the group concluded that the same goals could be essentially achieved by rigorously pursuing functional separation of Bonneville's power marketing and transmission functions combined with FERC regulation. The Transition Board agreed with this assessment.

A somewhat less complex, but important, problem is the removal of barriers to Bonneville's participation in a regional transmission organization. Participation in a properly designed and executed RTO could go a long way toward meeting the Review's goals for transmission.

Extensive efforts have been made to establish a Northwest RTO. Bonneville was an active participant in the organizing discussions. Those efforts were eventually failed for a number of reasons. However, FERC is actively looking at encouraging or perhaps even requiring RTOs. Bonneville's actual participation in an RTO, however, is currently problematic. One reason is that Bonneville is believed to be constrained from turning over operational control of its transmission system to an RTO primarily by the provisions of Section 208 of the Urgent Supplemental Appropriations Act of 1986 (Pub. L. No. 99-349, 100 Stat. 749, July 2, 1986). Section 208 had a broader purpose, but one of its consequences is believed to be to preclude Bonneville's participation in the regional IGO. These constraints would need to be changed.

Subjecting Bonneville's transmission to FERC regulation equivalent to FERC's regulation of the transmission systems of investor owned utilities has subsequently been a major focus of the Transition Board's activities. Last summer, the Transition Board adopted a set of principles for applying FERC regulation to Bonneville. Those principles are designed to achieve equivalence to the greatest extent possible while at the same time recognizing the legitimate differences of Bonneville as a Federal agency. Those principles are:

(1) FERC's authority over Bonneville's transmission should be based on Parts II and III of the FPA.

(2) Section 201 of the FPA should be amended to make clear that FERC's authority is limited to Bonneville's transmission. FERC's authority over Bonneville's power should only be expanded to the extent required by a contingent cost recovery mechanism.
(3) Bonneville should be exempt from FERC's authorities under Sections 204, 207, 209, 214 303 and 305 of the FPA. Section 212(i) should be repealed.
(4) FERC's enforcement authority should be based on Sections 307, 314, 315 and 316 of the FPA.
(5) FERC's newly established authority should clearly supersede any conflicting provision of Bonneville's organic statutes.
(6) Total recovery of Bonneville's transmission costs should not be compromised. FERC should apply the "just and reasonable" standard, recognizing that Bonneville has no stockholders to absorb losses, so that FERC cannot disallow Bonneville costs already incurred at the time of any such FERC process.
(7) Neither the priority of payments nor Bonneville's third party debt should be compromised.
(8) In rare instances, priority access should be made available to Bonneville's transmission system to permit federal and non-federal users to meet environmental obligations.
(9) FERC's new authority should become effective on or after October 1, 2001.
(10) Bonneville should be permitted to join a FERC-regulated independent system operator.
(11) FERC hearings on Bonneville rates should be held in the Pacific Northwest.

The Transition Board directed staff to work with interests in the region to identify the changes in the Federal Power Act and the conforming changes in Bonneville's organic statutes necessary to effect these principles. There is no consensus within the region on these changes. The Transition Board is preparing a report that provides a short description of those issues, the positions of various parties and, where possible, proposed resolutions. The Board will make the report available to you when it is complete.

Several of the Transition Board's recommendations on transmission are incorporated in the Clinton administration's recently released "Comprehensive Electricity Competition Act." There are, however, differences that could lead to conflicts between the FPA and Bonneville's statutes in the future. In addition, the administration's draft bill does not provide for FERC hearings in the Northwest.

Contingent Cost Recovery

The final report from the Comprehensive Review noted that if its recommendations were prudently implemented, the risk that Bonneville would be unable to fully recover its costs in power rates would be reduced dramatically. Nevertheless, it recommended that an emergency cost recovery mechanism be established.

This issue was and continues to be extremely controversial. When all is taken into consideration, however, the Transition Board believes a realistic process for dealing with Bonneville's possible inability to fully recover its power costs in power rates must be part of the package. Moreover, such a process is essential if the Comprehensive Review's goal of aligning the benefits and risks of access to federal power is to be met. Because the federal power is limited, not all that might like to purchase that power will be able to do so. The Transition Board believes that those who do not get to purchase federal power should not be asked to help pay Bonneville's power costs through charges on transmission services except in the most extreme circumstances.

The Transition Board has developed draft recommendations for a process of contingent cost recovery. Those principles are:

(1) First, Bonneville would rely on its cash reserves and any credits available under Section 4(h)(10)(c) of the Northwest Power Act.
(2) If these proved insufficient, Bonneville would identify possible cost reductions, take public comment, and implement those that are appropriate.
(3) If it was still projected that reserves would fall below a critical level, Bonneville would initiate the first stage of a contingent cost recovery mechanism through a power rate adjustment. The amount of rate adjustment would be the lower of a predetermined market cap or an amount that would assure cash reserves were rebuilt to a level sufficient to ensure that Bonneville can make its annual Treasury payment.
(4) If it still appeared likely that the Treasury payment would have to be deferred, then the second stage, involving surcharges on transmission rates, could be implemented following review, possible modification and approval by FERC. The Transition Board recommends that FERC approve a mechanism that would recover no more than $100 million in any year, up to a cumulative total of $600

million and that any such revenues recovered from transmission revenues would be treated as a loan from transmission to power, to be repaid with interest.

There is a lack of regional consensus and a great deal of controversy surrounding this proposal. Some of the controversy has to do with the workings of such a mechanism. Some of the controversy stems from disagreement with the mechanism's objectives. A contingent cost recovery mechanism has been incorporated into Bonneville's subscription proposal. Although not unalterably wedded to its own specific proposal, the Transition Board is concerned that Bonneville's proposal is not sufficiently robust. It may not provide safeguards against unnecessarily imposing a transmission charge equivalent to those provided by the Transition Board's proposed mechanism. The Board intends to work with Bonneville to ensure that a sufficiently robust contingent cost recovery mechanism is instituted.

River Governance

The question of river governance—or more accurately, how decisions about fish and wildlife restoration and the operation and configuration of the Columbia River System are made—is central to the success of the recommendations of the Comprehensive Review. Fish advocates demand greater certainty about the restoration measures that will be undertaken and the availability of funds to carry them out. Utilities and others need greater certainty about their obligations to pay for such measures. No one is entirely satisfied with the current process.

There is a shared sense that the states, tribes and federal government need to work together to address governance and the fish, wildlife, energy and other issues that governance entails. The governors are committed to pursue this dialogue, recognizing that they have a limited period of time to address these very challenging issues.

During the last year, the region took important steps to improve communication and collaboration on fish and wildlife issues. Two new efforts, the Multi-Species Framework Project and the Columbia River Basin Forum, are the most important examples of the region's commitment to new alternatives for managing the resources of the Columbia River Basin. In addition, the governors are actively discussing a set of principles that could be used as a basis for river governance legislation.

Mr. Chairman, this concludes my testimony, and I would be pleased to answer any questions you or the other Members of the subcommittee may have.

Mr. STEARNS. I thank the gentleman.

Doctor, you are recognized for 5 minutes for your opening statement.

STATEMENT OF H. BRADLEY ELDREDGE

Mr. ELDREDGE. Thank you, Mr. Chairman. I thank you for this opportunity to testify here. I am representing the Public Power Council. We commend you for holding this hearing today.

BPA has an important role in the Northwest region for moving forward the economic vitality of the region, where it represents 40 percent of the generation and 70 percent of the transmission in the region. BPA is also a mechanism to ensure that investments have been made in generation and transmission. Those investments have been made by the U.S. Government. Ultimately, the U.S. taxpayers bear the burden. Third-party bond holders also have an interest in BPA, because of the guarantee that BPA made on WPPSS. Finally, BPA is a source of funding for public purposes. These purposes include fish and wildlife conservation, and renewable and environmentally benign energy supplies.

We feel that changes are needed to adapt BPA to the changing structure of the electric industry. PPC's members are most at risk from any change in the status quo. We do believe changes are appropriate at this time. However, we feel the subcommittee should be deliberate in considering these changes, because any misstep

could have substantial consequences to the region and to our country.

The BPA transmission system should operate under the same rules as other utilities, which includes oversight by FERC. But the Federal Power Act must not be unconditionally applied to BPA's transmission service without regard to prior historical circumstances. Such blind application could affect or threaten repayment to the Treasury; undermine financial backing of third-party bonds; cause substantial cost shifts among transmission customers; raise rates to rural users, and eliminate regional decisionmaking.

The PPC urges the subcommittee to be careful in applying the Federal Power Act to BPA. This application must be accompanied by clear authority for BPA to recover their costs, and a conditional and last-resort method that the surcharged be capped and time-limited and applied on a uniform basis to all transmission users. This will ensure that BPA can continue funding public purpose programs, and retain its existing priority of payments as set forth in statute, contract, and regulation.

Finally, the changes made should ensure that BPA can continue its statutory obligations to extend the benefits of the transmission system and develop the widest possible, diversified use of energy. FERC does have discretion to accommodate these points. However, it is sufficiently important that these items not be left in doubt. We are seeking policy outcomes that are not inconsistent with FERC's general approach, but ask for assurance that FERC will respect BPA's unique circumstance.

BPA's financial outlook is positive at this time. This may not always be the case. We need to have a contingent mechanism in place in case BPA needs to raise money to satisfy these obligations. In essence, the surcharge represents another tool in BPA's portfolio that can be used to cover its costs in an unusual, high-cost situation.

Without clear congressional direction, particularly with application of the Federal Power Act, cost recovery options for BPA may be legally limited and severely inequitable. BPA must be granted express authority to impose this uniform transmission surcharge as needed as a last resort.

I greatly appreciate the opportunity to testify today. I appreciate the task you have of balancing transmission regulation, regional circumstances, history, and priorities. I believe the policies that I have articulated in my statement today provide this balance. I am pleased that members of the Northwest Delegation have spoken here today. They recognize the seriousness of these issues, and have devoted considerable time toward crafting balanced consensus legislation. I urge members of the subcommittee to work closely with the Northwest Delegation on these critical issues. Thank you.

[The prepared statement of H. Bradley Eldredge follows:]

PREPARED STATEMENT OF H. BRADLEY ELDREDGE, COUNCILMEMBER, CITY OF IDAHO FALLS, ON BEHALF OF THE PUBLIC POWER COUNCIL

Mr. Chairman, members of the Subcommittee, thank you for this opportunity to testify. I am Brad Eldredge. I am an assistant professor of chemical engineering at the University of Idaho, and a member of the Idaho Falls City Council. The City of Idaho Falls owns and operates a municipal utility, the largest consumer-owned system in the state of Idaho with 23,000 customers and peak load of 150 MW. We

have been in the full service electricity business since 1900. The city owns 50 MW of hydroelectric generating capacity that supplies roughly 40 percent of our energy needs. We purchase the remainder primarily from the Bonneville Power Administration (BPA). I am testifying today on behalf of the Public Power Council (PPC). PPC is a regional trade association representing municipal utilities, rural electric cooperatives and public utility districts on issues related to BPA.

PPC commends you for holding this hearing today. Considerable attention has been focused on the role of BPA in a competitive market and what changes, if any, are needed to adapt BPA to the evolving structure of the electric industry. PPC's members are most at risk from any change to the status quo. Nonetheless, PPC agrees that some changes are appropriate. However, we encourage the subcommittee to be cautious in pursuing such changes. BPA is a central feature of the Northwest and its economic vitality. BPA has diverse and complex statutory, treaty and contractual obligations that reach deep into the fabric of the region. BPA is integral to the

- maintenance of affordable electric service that has served as the economic engine of the region;
- provision of high-quality and affordable transmission and energy service for rural and remote electric consumers;
- security of third-party bonds used to finance generation and conservation projects;
- coordinated operations of the utility and river systems; and
- restoration of the region's fish and wildlife resources.

In developing a "Northwest Title", it is essential to remember and respect these factors.

OVERVIEW

Members of this Subcommittee, Administration officials and regional policymakers have outlined two central policy objectives for formation of a Northwest Title:

1. Extension of Federal Energy Regulatory Commission (FERC) oversight to assure open, non-discriminatory access to the BPA transmission system, and
2. Assurance that the region honor BPA's financial obligations, including the obligations for Treasury repayment, third-party debt and fish and wildlife measures.

PPC supports steps to achieve these objectives. Further, we urge the Subcommittee to recognize that tensions exist between these objectives and BPA's historic mission and statutory obligations. Given these tensions, any Northwest Title must be carefully and thoughtfully crafted.

FERC REGULATION OF BPA TRANSMISSION

Nearly every restructuring bill introduced to date includes extension of the Federal Power Act (FPA)—in some form—to the transmission system of BPA. The purported purpose of such action is to ensure competitively neutral access to the BPA transmission network and to preclude any manipulation of the transmission system to advantage BPA power marketing activities. PPC believes it should be noted that BPA has had reasonable access standards and transmission pricing long before such requirements were adopted in the Energy Policy Act of 1992. Nonetheless, we recognize that additional measures would affirm nondiscriminatory access and respond to concerns that BPA not operate under a regulatory system different from private transmission providers.

The FPA must not, though, be unconditionally applied to BPA transmission service. Such blind application could threaten Treasury repayment, undermine the financial backing of third-party bonds, cause substantial cost shifts among transmission customers, and raise transmission rates to rural users to prohibitively high levels.

1. Financial Obligations

Under BPA's statutes, rates for both power sales and transmission service must be set to assure total system cost recovery. Revenues from both power sales and transmission service are pledged to meet BPA's Treasury obligation as well as repayment of third-party bonds used to finance both generation and conservation resources in the region. Segregating the use of transmission and power revenues—a cornerstone of FPA application—could undermine the security of BPA's financial obligations.

Strict and complete FPA application could further diminish the financial integrity of BPA. FERC has adopted strict standards for collection of stranded costs. Under those standards, all BPA customer classes will present legal claims to insulate themselves from any stranded cost recovery:

- The large industrial customers—mainly aluminum plants—that receive direct service from BPA have contractual provisions that they believe may shield them from directed stranded cost charges;
- Regional private utilities will claim that—despite a myriad of services purchased and received from BPA—they were not "requirements" customers of BPA and therefore are insulated from any stranded costs; and
- BPA's consumer-owned utility customers will argue that their BPA power sales contracts—including those that predate FERC's Order 888 and those that followed it—do not meet the criteria for imposition of stranded cost charges.

Clearly, it is not desirable to have maintenance of BPA's financial obligations mired in numerous and contentious legal challenges.

2. Affordable Service

BPA has long served as the economic engine of the Pacific Northwest. The availability of affordable electricity has offset the higher transportation costs faced by the region.

BPA has also played a central role in promoting economic development throughout the region—not merely in the urban centers and up and down the I-5 Corridor. The extensive BPA transmission network is an important mechanism in ensuring that broad regional distribution. BPA has a specific statutory responsibility to promote the "widest possible diversified use of energy" and to "extend the benefits of an integrated transmission system." Under this authority, rural and remote consumer-owned utilities typically receive service at both high quality and reasonable price. FPA application to BPA must not dilute this current responsibility.

3. BPA Status as a Governmental Entity

BPA is a governmental entity. As a result of BPA's ownership structure, several differences emerge that deserve special consideration:

- BPA has no shareholders receiving a rate of return that reflects the risk that certain costs may not be recovered in rates;
- If costs have been incurred, but disallowed for recovery, Treasury would bear exclusive risk under strict FPA application;
- The extensive scope of the BPA transmission system poses increased risk of cost shifts among customer classes through sudden application of a new system of ratemaking and accounting;
- Extensive operational mandates to achieve environmental objectives (such as ESA compliance for listed fish species) may require priority to the transmission system that would not be otherwise justified under the FPA.

It is thus imperative to recognize, and to account for, BPA's status as a government entity in applying the Federal Power Act.

4. Regional Decisionmaking

The Northwest has a long and extensive history of regional input on BPA policies. BPA's organic statutes establish an involved regional public process for setting transmission rates and policies. PPC believes that this regional process provides important means of considering and reflecting regional policies and objectives. We believe that a continued forum for regional input is needed.

5. Regional Transmission System Operator

BPA has already taken steps to separate functionally its transmission and power marketing activities. In addition, considerable discussion has occurred on the future role and shape of an Independent System Operator (ISO) or some regional grid management organization. PPC recognizes that such a structure can provide a means of further advancing open transmission access and increasing separation between the merchant function of marketing power and transmission service. However, such a structure may also impose substantial new infrastructure costs, produce significant cost shifts and discriminate against consumers in rural areas.

PPC is willing to discuss alternate transmission grid management organizations under the following initial guidelines:

- The economic benefits of the new system must exceed the costs of establishing and maintaining the infrastructure.
- All parties must share in the economic benefits—there should be no major cost shifts among users.
- Rate "pancaking" should be eliminated.
- The management structure must be regional, independent, equitable and accountable.

PPC suggests authorizing BPA to participate in an ISO and support regional discussions on developing an ISO consistent with the guidelines outlined above. We would oppose mandating BPA participation in an ISO.

PPC TRANSMISSION RECOMMENDATIONS

Having the BPA transmission system operate under the same "rules of the road" as other utilities is largely appropriate. However, the FPA must not be unconditionally applied to BPA transmission service. As noted above, such blind application could threaten Treasury repayment, undermine the financial backing of third-party bonds, cause substantial cost shifts between transmission customers, raise rates to rural users and eliminate regional decision-making.

PPC urges the Subcommittee to be careful in applying the Federal Power Act to BPA. Specifically, PPC believes that any application of the FPA to BPA must

- Be accompanied by clear BPA cost recovery authority that conditional, capped and time-limited and applied on a uniform basis to all transmission users (discussed below).
- Apply only to BPA transmission and not allow expansion of FERC authority over BPA power rates.
- Include only those FPA provisions that are appropriate given BPA's governmental status.
- Be tailored to

1. Not diminish or otherwise threaten BPA's ability to meet its financial obligations to the Treasury and third-party bondholders.
2. Retain existing priority of payments as set forth in statute, contract and regulation.
3. Not undermine BPA's authority to finance system improvements and additions.
4. Ensure continued satisfaction of BPA's statutory obligations to provide transmission and power services to consumers throughout the region.
5. Prevent or mitigate unreasonable cost increases and cost shifts.
6. Preserve opportunities for regional input and BPA Administrator discretion in formulating BPA's transmission rates, terms, conditions and policies.

Mr. Chairman, you will hear from some of the witnesses today that FERC has discretion to accommodate the points noted above. I agree that many of these concerns fall within FERC's discretion; however, I believe they are sufficiently important not to be left in doubt. We are not seeking policy outcomes inconsistent with FERC's general approach, we are merely asking for some needed assurances.

COST RECOVERY MECHANISM

BPA's financial outlook appears positive at this time. PPC recognizes that it may nevertheless be necessary to develop a contingent mechanism to assure ongoing satisfaction of BPA's financial obligations.

As noted above, absent clear congressional direction—particularly with strict application of the FPA—the cost recovery options available to BPA may be legally limited (and severely inequitable). Consequently, we believe that BPA must be granted express authority to impose a uniform transmission surcharge when needed to meet its financial obligations. This authority must be contingent, time-limited and, and capped. Specifically, the mechanism must

- Be triggered only by actual—not projected—financial shortfalls;
- Include annual ($50 million) and lifetime ($400 million) caps;
- Require that BPA take appropriate and significant steps before implementing it;
- Recover only the costs that pre-date enactment of the mechanism; and
- Be imposed on a uniform basis applicable to all transmission users.

Other regional witnesses will oppose application of a uniform transmission charge, or urge the subcommittee to leave design of the mechanism to FERC. PPC strongly disagrees and notes that

- BPA is a regional resource—and all parties in the region have benefited from BPA's presence in a variety of ways (including requirements power sales, regional preference to surplus energy sales, residential exchange cash subsidies, transmission development and use, and operational coordination). Therefore, it is appropriate for all regional beneficiaries to share the burden of any BPA cash-flow problem.
- Any cash-flow problem is likely to result from an inability to cover costs associated with historic power supply decisions—decisions that benefited all parties in the region.

- A uniform transmission charge provides the greatest ease of administration, fewest opportunities to unfairly "escape" financial responsibility and least distortion of the wholesale power market.

Leaving the matter to FERC casts doubt on BPA's ability to take needed steps to satisfy its financial responsibilities. Congress must clearly articulate the contingent cost-recovery mechanism.

CONCLUSION

I appreciate the opportunity to testify today—and appreciate the difficult task you have in both encouraging consistent transmission regulation while respecting regional differences, history and policy priorities. I believe the policies articulated in my statement provide the right balance.

I am pleased that the members of the Northwest congressional delegation recognize the seriousness of these issues and have themselves devoted considerable time toward crafting balanced, consensus legislation. I urge the members of the subcommittee to work closely with the Northwest delegation on these critical issues.

Mr. BARTON. Now, I would like to hear from Mr. Litchfield. Your statement is in the record. We would ask that you summarize it in 5 minutes.

STATEMENT OF JAMES LITCHFIELD

Mr. LITCHFIELD. Thank you, Mr. Chairman and members of the subcommittee. My name is Jim Litchfield. I am appearing here today at the direction——

Mr. BARTON. Can you pull the microphone a little bit closer, and speak loudly.

Mr. LITCHFIELD. Okay. Mr. Chairman, I am appearing today at the direction of seven investor-owned utilities that serve 60 percent of the region's residential, agricultural, and industrial customers in the Pacific Northwest.

My testimony will address the Bonneville Power Administration and the need for legislation defining its role in developing competitive power markets. BPA is not just another player the Pacific Northwest electric power industry. It is a player that dwarfs all others. Bonneville controls power sales from almost 50 percent of the regions electrical generating capability. It owns and operates almost 80 percent of the region's high-voltage transmission capacity.

Because of BPA's dominant position, the 1996 Regional Review, convened by four Northwest Governors, recommended legislation to subject Bonneville's transmission to FERC regulation equivalent to investor-owned utilities. We concur. Some may question giving FERC more authority over BPA during an era when Congress is relying less on regulation and more on competition. However, transmission remains a monopoly service that must be regulated in order to achieve competitive power markets.

Today, BPA is a self-regulating transmission monopolist. Absent meaningful regulation, BPA can inappropriately limit its competitors' access to buyers on Bonneville's transmission highway, thereby gaining an unfair competitive advantage in the wholesale power market. Thus, FERC regulation under the Federal Power Act of BPA transmission is a necessary prerequisite to development of competitive power markets.

We urge this subcommittee to incorporate two key principles in Federal Power Act legislation. First, Bonneville's transmission rates, terms, and conditions must be subject to Federal Power Act regulation by FERC, including application of the just and reason-

able standard, as it is applied to investor-owned utilities. This is necessary to prevent manipulation of transmission to frustrate power marketers.

Second, any BPA power cost recovery provisions must not create impediments to the development of competitive wholesale power markets; nor should such provisions unfairly assign power costs to those in the region that do not benefit from Bonneville's low-cost power. Effective legislation would give FERC authority to prevent abuses and to ensure fair and open access to transmission capability. However, it is impossible to expect a fully competitive wholesale power market to develop, if BPA legislation is so riddled with exceptions as to make FERC regulation illusory and ineffective. The administration's bill would enact virtually meaningless FERC regulation of BPA.

Let me turn to two other questions posed by the committee. First, how to assure that the Federal electric utilities recover their costs; and a related question: whether there is a need to address stranded costs in legislation.

First, those BPA customers who have the claim to buy power at cost, when that cost is below market, have a symmetrical obligation to agree to pay cost, if it ever goes above market. This principle of aligning the risks and rewards of the Federal hydropower system in the Northwest was the basis of the Northwest Governors' regional review recommendations.

There is also no need to address stranded costs in legislation, because BPA does not have stranded, historic costs in the type defined by FERC in Order 888. Instead, advocates of a special recovery provision, such as those included in the administration's bill, want to ensure recovery of future, rather than past, costs associated with Federal generation. Investor-owned utilities oppose special legislation to address recovery of potential future costs for BPA, because it is unfair and unnecessary. A transmission surcharge would force Bonneville's transmission customers to pay a portion of Bonneville's generation-related costs, even if they derive no benefit from Federal power. This would unfairly shift BPA's power costs to our customers, who get little or no benefit.

It is important for the subcommittee to understand that the benefits of low-cost Federal power are not spread equally throughout the region, or among retail customer classes. We serve more than half of the region's residential customers, but our residential customers will only get approximately 20 percent of the benefits of the Federal system, under the BPA subscription plan.

Thank you very much for your time today. I would be happy to answer any questions you may have.

[The prepared statement of James Litchfield follows:]

PREPARED STATEMENT OF JAMES LITCHFIELD, PRESIDENT, LITCHFIELD CONSULTING GROUP, INC., ON BEHALF OF THE INVESTOR-OWNED UTILITIES OF THE NORTHWEST

Mr. Chairman, Members of the Subcommittee: My name is James Litchfield, I am President of the Litchfield Consulting Group, Inc. I appreciate the opportunity to appear here today representing the investor-owned utilities of the Northwest (Investor-owned Utilities). These companies include Avista Corporation, Idaho Power Company, The Montana Power Company, PacifiCorp, Portland General Electric Company (a subsidiary of Enron Corporation), Puget Sound Energy, Inc., and Sierra Pacific Resources. We are seven companies that serve the majority—or 60%—of the region's customers. Most of the remaining retail customers are served by public util-

ities and cooperatives that purchase low-cost federal power from the Bonneville Power Administration (Bonneville or BPA). The Investor-owned Utilities are also major transmission customers of Bonneville.

Issues surrounding Power Marketing Administrations (PMAs), and BPA in particular, will greatly impact the extent to which real competition in the wholesale power market can be achieved in the Northwest. We commend you for holding this hearing on this important topic. The Investor-owned Utilities have been working within the Northwest region with the other parties represented here today to try to reach consensus on some of these issues, and we look forward to continuing to work with you and with the Northwest Congressional delegation as legislation is considered this year. I will summarize our thoughts on some of the major issues, but would request that my full statement be placed into the record. I will also explain our companies' concern that actions BPA is now taking may make any Congressional reform "academic" for years to come.

By way of background, it is useful to know that, for those of us in the Pacific Northwest, BPA is not just another player in our regional electricity industry; it is a player that dwarfs all others. Bonneville markets about 10,000 average megawatts of low-cost Federal power, including 2,000 average megawatts in the open wholesale market at negotiated prices. Ten thousand megawatts is enough power to serve all the region's residences. These Bonneville wholesale power sales directly compete with other utilities' and power marketers' sales efforts in the western US and Canada. In fact, Bonneville controls power sales from almost 50% of the region's generation. Moreover, Bonneville controls almost 80% of the region's high voltage transmission capacity which is not meaningfully regulated. BPA's dominant position in both the power and transmission provides Bonneville with the unique opportunity to distort or prevent the development of a robust Northwest competitive wholesale electric power market. For this reason, the 1996 Comprehensive Review of the Northwest Energy System ("Regional Review"), convened by the four Northwest Governors, recommended "...legislation...[to] subject Bonneville's transmission to FERC regulation that is equivalent to FERC regulation of investor-owned utilities."

FERC Chairman Hoecker emphasized in his recent testimony before this Subcommittee that placing all transmission facilities in the Lower 48 states within FERC's open access transmission rules is a prerequisite to development of a robust competitive wholesale power market. Consistent with that, we believe two principles are especially important:

- First, Bonneville's transmission rates, terms and conditions must be subject to Federal Power Act regulation by FERC. This is necessary—in Chairman Hoecker's words—"to prevent manipulations of the operation of transmission to frustrate power marketing competitors."
- Second, any BPA power cost recovery provisions must not create impediments to the development of competitive wholesale power markets, nor assign power costs to those in the region not benefitting equally with others from Bonneville's low-cost power. This is essential since BPA's subscription plan for allocating the benefits of low-cost Federal power after 2001 severely limits benefits to our residential customers and provides no benefits at all for our business customers.

We urge this Subcommittee to incorporate these key principles in legislation.

We recognize that some may question giving FERC more authority over BPA, during an era when Congress is relying less on regulation and more on competition. Therefore, it is worth pointing out that FERC regulation of BPA transmissions is fully consistent with the goal of greater reliance upon competition in wholesale power or retail electricity markets. *There remains broad agreement that transmission is a monopoly service that must be regulated in order to achieve competitive power markets.* Today BPA is a "self-regulating transmission monopolist" that can use its largely unrestrained monopoly position to gain an unfair competitive advantage in the wholesale power market. Thus FERC Federal Power Act regulation of BPA transmission is consistent with the objective of relying on competition in either wholesale power or retail electricity markets.

BPA Transmission Rates, Terms, and Conditions Should be Regulated Under the Federal Power Act.

Let me address Federal Power Act regulation of Bonneville first. In recent years discussion has focused on placing Bonneville's transmission, but not its power marketing, under FERC regulation equivalent to that exercised over the Investor-owned Utilities. Absent such regulation, BPA will be able to distort the development of competitive markets by inappropriately limiting its competitors' access to buyers on Bonneville's transmission highway. Given Bonneville's dominance in the region's transmission and power markets, preventing such anti-competitive activity is particularly important to our companies.

The transmission provisions of the Federal Power Act are the basis of FERC's "open access" policy and the resulting regulation of transmission access and pricing to facilitate competitive wholesale electric markets. A key principle of this policy, which was enacted into law by the Energy Policy Act of 1992 and is implemented by the Federal Energy Regulatory Commission's Orders 888 and 889, is "comparability"; that is, ensuring all wholesale electric power marketers have transmission access and pricing comparable to that which a transmission owner provides itself.

Through section 212(I) of the Federal Power Act, Bonneville is uniquely exempt from these provisions. While the agency has voluntarily agreed to comply with the orders in principle, two key regulatory elements are missing—(1) oversight and enforcement of BPA's compliance with Orders 888 and 881 by FERC, the agency that ensures compliance by most other transmission owners; and (2) independent review by FERC of BPA's transmission rates, together with review of its tariff terms and conditions. Given that BPA owns and operates 80 percent of the transmission in the Pacific Northwest, this unique exemption leaves a large gap in FERC's ability to facilitate the competitive wholesale power market in the Pacific Northwest.

Effective legislation should give FERC full authority under the Federal Power Act to regulate a Bonneville transmission entity that is truly functionally separate from its power business. This would give FERC the necessary authority and expertise to prevent abuses and to ensure fair and open access to transmission capability. Bringing BPA's transmission business under true Federal Power Act regulation should assure a level playing field among BPA and all other competitors, thus providing the lowest possible prices to consumers.

However, it is impossible to expect a fully competitive wholesale power market to develop in the Northwest if legislation subjecting Bonneville to Federal Power Act standards is so riddled with exceptions as to make FERC regulation illusory and ineffective. For example, the BPA proposal contained in the Administration's bill purports to subject Bonneville to the "just and reasonable" standard of the Federal Power Act. In reality, the exceptions contained in the bill would make FERC regulation virtually meaningless.

The BPA Subtitle of the Administration's Bill Contains Unacceptable Exceptions to the "Just and Reasonable" Standards of the Federal Power Act.

Section 812 of the bill purports to make BPA transmission subject to the Federal Power Act. However, the proposed Section 201A(b)(1) of the Federal Power Act is so riddled with exceptions to the Federal Power Act's "just and reasonable" rate making standard as to totally undermine any benefit of BPA being regulated under the Act. In addition, many of these exceptions are unnecessary, overlapping and will lead to confusing legal interpretations. The following are the three most troublesome exceptions.

The Benefits of Applying the Federal Power Act to BPA are Lost if BPA can Escape Regulation Based on the "Other Laws" Exception: Section 201(b)(1)(C) would make an exception to the "just and reasonable" standard for compliance with the requirements of other laws applicable to the Bonneville Administrator. If the drafters intend simply to interpret to the extent possible the Federal Power Act and other statutes applicable to BPA in a harmonious fashion, this provision is unnecessary. Under accepted rules of statutory construction, laws are construed in a harmonious fashion.

The Courts could construe this provision to require that FERC's historic or contemporary construction of the just and reasonable standard be altered to give effect to all other existing and future statutes governing Bonneville. Moreover, this provision could be used to completely undermine meaningful Federal Power Act regulation. If Bonneville is successful, the result would be the application of regulatory standards to BPA totally unlike those applied to the Investor-owned Utilities.

The Ninth Circuit Court of Appeals has broadly construed BPA's authority under those "other laws." Bonneville would argue that FERC would be required to find nearly any BPA action "just and reasonable." See, for example, the 9th Circuit's 1997 decision in *Association of Public Agency Customers v. BPA*, 126 F.3d 1158, 1175: "We are not to debate the wisdom of any BPA business decision unless the decision is so manifestly unreasonable as to rise to the level of being arbitrary and capricious." So, unless a BPA action or decision was "so manifestly unreasonable as to rise to the level of being arbitrary and capricious" Sec. 201(A)(b)(1)(C) could require FERC to find BPAs conduct to be "just, reasonable, not unduly discriminatory or preferential." Under the Federal Power Act, FERC is typically the agency granted deference to apply the Federal Power Act "just and reasonable standard." FERC simply cannot assure equivalent regulation of BPA absent deference to construe the Federal Power Act as it applies to Bonneville.

The BPA Rate making Standards Should not be Diluted by Bootstrapping Specific Rate Making Approaches into the Law: Section 201A(b)(1) (D) would require transmission rates to be set according to the same standards found in BPA's organic statutes including the Northwest Power Act with one exception which I will discuss later. Specifically, BPA's rates must now ensure recovery of transmission investments over a reasonable number of years and produce revenues necessary to assure timely payment of all transmission costs. Application of the "just and reasonable" standard of investment would already assure recovery of transmission costs and render this provision unnecessary. If enacted, BPA or others will argue that this provision requires FERC to apply Bonneville's historic rate making methodology to BPA (and even allow BPA to include speculative future investments in its rates), rather than permitting FERC to apply any other methodology to recover costs that the Commission may deem more appropriate. The addition of the proposed rate making standards would only lead to years of litigation as to how the two standards should be interpreted together. The one exception to BPA's organic rate making standards is that 201A(b)(1) (D) would also provide for recovery of undefined "future Federal investment in the Bonneville Transmission System . . ." This exception gives BPA license to make imprudent future transmission investments and charge ratepayers without any regulatory review. This provision is troublesome and would exempt BPA from the "prudency requirement" for inclusion of transmission costs in rates. Such an approach does not result in equivalent FERC regulation for BPA.

An Exception to the Transmission Rules for the Fish Mitigation is Not Necessary and Provides a Distinct Competitive Advantage to BPA: Section 813 of the bill would create an exception to Order No. 888 to assure transmission access for fish mitigation efforts. This provision is anti-competitive and unnecessary. Proposed Section 201A(b)(1) (E) directs FERC to establish rules to assure transmission access over the BPA system "for hydroelectric power that must be generated and transmitted at a particular time in order to reduce spill and levels of dissolved nitrogen gas harmful to fish."

This provision appears to be competitively neutral because it allows power generated at all hydroelectric dams, not just federal dams, access to the BPA transmission system. But this provision is not neutral because of two other factors. First, the provision only provides access to the BPA transmission system, not the portion of the Northwest transmission system that is nonfederal. Because all of the federal dams are directly connected to the BPA transmission system, Bonneville will always benefit from this provision, while some nonfederal dams that need access to nonfederal transmission facilities will not have the benefit of this provision.

Second, with this provision in place, BPA would be able to market its hydropower as enjoying more reliable transmission access than either the hydropower or thermal products offered by nonfederal entities. That is a competitive advantage.

Instead, the Investor-owned Utilities propose that BPA use the market to solve this problem. For decades, BPA has marketed its hydropower during peak Spring flows by pricing it just below the market price of thermal power. Similarly, when transmission capacity is fully subscribed and BPA needs to generate instead of spill in order to protect fish, BPA should offer that electricity to Bonneville's scheduled transmission customers at a competitive price. By doing so, the transmission users will purchase BPA's hydropower and displace their other energy sources. BPA agreed to use this approach for fish during discussions regarding regional transmission organization, and it is the right answer.

Moreover, the Commission has created a pervasive regulatory scheme over transmission access in Order No. 888. If the market solution is inadequate, FERC has available authority to fashion a "just and reasonable" proposal for special transmission access for fish mitigation. In fact, FERC has already invited Bonneville to work with Northwest parties to evaluate the need for special transmission access for fish mitigation and make a regional proposal for FERC's consideration. Consequently, the resolution of any unanticipated problem should be left to FERC.

If Congress determines that FERC lacks sufficient authority to address environmental concerns such as fish mitigation through existing regulatory authority, the Investor-owned Utilities urge Congress to give FERC authority to determine the just, reasonable and not unduly discriminatory preferential scheme for access for fish mitigation to all the region's hydro systems. Any exception to open access rules should provide equivalent FERC regulation of BPA and others under rules of general applicability that provide for appropriate compensation and prevent the appropriation of a competitor's markets.

The Phase-In Exceptions Are Not Necessary: In addition to the problematic provisions I have just discussed, the BPA proposal in the Administration's bill contains other unnecessary and potentially anticompetitive provisions. Proposed Section 201(b)(1)(A) would legislatively authorize FERC to phase-in changes to BPA's trans-

mission rates. Proposed Section 201(b)(1)(B) would allow the FERC to "mitigate" "unreasonable adverse impacts" on remote transmission customers resulting from a change in historic treatment of costs to acquire transmission to serve those customers.

While the Investor-owned Utilities recognize the concerns of rural customers and existing transmission customers, there is no need for these provisions. The FERC is already authorized to consider and mitigate "rate shock" pursuant to the "just and reasonable" rate making standard. There is no need to put extra emphasis on phasing-in rates or mitigation for BPA. Further the Section 201(b)(1)(B) mitigation overlaps with the phase-in required in Section 201(b)(1)(A). The Investor-owned Utilities believe that report language would be sufficient to clarify that phase-ins are already within the FERC's authority.

In summary, the Administration's bill does not implement the recommendation of the Northwest Governors' Regional Review that legislation should "subject Bonneville's transmission to FERC regulation that is equivalent to FERC regulation of investor-owned utilities."

FERC Should be Given Additional Regulatory Authority Over BPA.

Other provisions are also needed to ensure meaningful regulation of BPA because it is not subject to antitrust laws. FERC must be given authority to take action against any anti-competitive conduct by Bonneville. The Northwest Governors' Regional Review recommended that any form of power not subscribed under long-term contracts and other unbundled power products "be sold at prices regulated by FERC or at competitive prices, where FERC determines that competitive markets exist." The current legislative proposals do not subject BPA's power rates to FERC regulation. At a minimum, some regulation to prevent anticompetitive effects of BPA power marketing is necessary. There is no principled reason to give a federal power marketer license to compete unfairly with private businesses. Inexplicably, the Administration's bill proposes to subject TVA to the nation's antitrust laws, but fails to propose any prohibition on anticompetitive conduct by BPA.

In addition, legislation should include provisions to remove any impediments to Bonneville's transmission becoming part of a regional transmission organization. Congress's role should not be one that mandates any regional transmission organization, but rather one of removing impediments to the voluntary formation of regional transmission organizations. First, the Congress should pass legislation that harmonizes federal regulation of Bonneville's transmission system with that of the Investor-owned Utilities—the other major transmission operators in the region. Second, legislation should clarify that BPA may join any regional transmission organization with FERC approval and may fully participate in and be bound by any dispute resolution mechanism (such as arbitration) adopted by such an organization. Additionally Congress should eliminate some of the impediments to Investor-owned Utilities participation in an independent transmission organization (i.e., tax treatment of asset spin-offs and lack of incentive rate making authority).

We trust this Subcommittee's bill will provide for true Federal Power Act jurisdiction over Bonneville's transmission by eliminating unnecessary exceptions to the "just and reasonable" standard and provide FERC adequate authority to oversee BPA's competitive conduct. In short, FERC regulation of Bonneville's transmission that is equivalent to regulation of Investor-owned Utilities transmission is public-interest protection against the abuse of monopoly power and will accelerate development of a robust competitive wholesale market in the Northwest.

Full Recovery of Bonneville's Costs Should Balance the Risks with the Rewards of the Federal Hydrosystem.

Clearly, those BPA customers in the Northwest who benefit from Federal power must accept responsibility for paying its full costs. None of those costs should be shifted to the nation's taxpayers nor to those in the region who do not share equally in the benefits of the low-cost Federal power. Those who have the special claim to buy the power at cost when that cost is below market have a symmetrical obligation to pay the cost if it ever goes above market.

Happily, a series of long-term analyses conducted by the Northwest Power Planning Council concluded few, if any, BPA power cost scenarios would result in above-market costs. If well managed, Bonneville can continue to sell power at cost-based rates that are below anticipated market prices for the next 20 years. *Thus, it appears no contingent cost recovery policy for above-market costs is necessary.*

This said, the Investor-owned Utilities oppose special legislation to address recovery of potential *future* costs for BPA because it is unfair and not necessary.

It is generally understood that BPA does not have stranded historic costs of the type defined by FERC Order 888. These stranded costs generally fall into the cat-

egory of past utility investments that were prudently incurred under a regulatory regime to serve the customers on an ongoing basis. As the rules of service change from a regulated monopoly environment to market competition, FERC policy has recognized that utilities should be made whole for any stranded costs, if necessary by surcharging transmission rates of the customers for whom historic long-term prudent investments were made. FERC has the authority under the Federal Power Act "just and reasonable" standard to address such stranded costs.

Although BPA has substantial costs—none of which were incurred on behalf of Investor-owned Utilities—related to net billing of bonds for the terminated nuclear plants of the Washington Public Power Supply System (WPPSS), it appears that BPA will be able to pay those bonds by about 2011 while selling power at or below market. Consequently, it does not face problems recovering the historic investments that were incurred to provide electric power to its wholesale customers. Instead, legislative proposals to assure Bonneville's transition cost recovery are aimed at ensuring recovery of *future*, rather than *past*, costs associated with federal generation projects.

From this unique desire to indemnify Bonneville against future cost exposures has come proposals that support generally-applicable transmission surcharges on Bonneville's transmission system as a revenue source to recover generation-related costs. Bonneville and its public utility customers have proposed that all those using BPA transmission should pay higher rates to pay for BPA power costs in the event such costs are ever forecast to exceed Bonneville's power revenues. They would apply a surcharge to all transmission users without requiring BPA first to raise its rates to recover all its power costs, even if BPA's price for power is below the market price.

Generally-applicable transmission surcharges to recover future BPA generation-related costs are troubling for two reasons: First, allowing Bonneville to move generation-related costs to transmission will reduce pressure on BPA to manage its generation-related costs. Second, it would force Bonneville's transmission customers to pay a portion of Bonneville's generation-related costs—even if they derive no benefits from federal power. That, in turn, would shift BPA power costs from those in the region who benefit the most from BPA power to our customers who get little or no benefit. Furthermore, Bonneville's transmission customers may also be Bonneville's competitors in the wholesale power market. Forcing these transmission customers to pay Bonneville's generation-related costs would have the totally unacceptable result of forcing one power sales competitor to pay the power costs of another competitor, improving the latter's (Bonneville's) competitive position. FERC would never permit Investor-owned Utilities to shift power costs to their competitors in this fashion.

Let me reiterate this point: Bonneville, a government player in the competitive market, should not be able to shift power costs to its competitors through a transmission surcharge. At the same time, our companies are not allowed to shift unrecovered power costs to our transmission customers generally because of Federal Power Act standards. We find it hard to understand why anyone would seriously entertain such a proposal. Some advocates of the transmission surcharge have argued that the surcharge is justified because BPA benefits the entire Northwest region. Therefore, before I leave this topic, I want to be certain the Subcommittee understands that the benefits of low-cost Federal power are *not* spread equally throughout the region or among retail customer classes. As I noted earlier, we serve 60% of the region's residential customers but our residential customers will get little more than 20% of the benefits of the Federal power under BPA's subscription plan. And our industrial and commercial customers get no low-cost firm BPA power at all.

To the extent that Bonneville has unrecovered generation-related transition costs, the Investor-owned Utilities have proposed authorizing the FERC to devise targeted (as opposed to generally-applicable) transmission surcharges to recover costs from departing customers. We believe FERC has adequate statutory authority to impose such a surcharge, if needed. This protection, along with other provisions such as loans if necessary between BPA's transmission and generation functions, should provide ample protection to meet either past stranded or future environmental costs. For future environmental cost recovery, the Investor-owned Utilities propose BPA and the Investor-owned Utilities themselves be treated comparably. Thus, if Congress determines that Bonneville should be able to tax transmission service to pay future environmental costs, FERC should be authorized to devise equivalent surcharges by other transmission owners to pay for their comparable costs.

Section 813, the cost recovery provision of the Administration bill, in contrast, grants BPA broad discretion to propose a transmission surcharge as a power-cost-recovery mechanism and requires FERC to establish BPA's surcharge proposal with-

out providing for meaningful FERC review. For this and other reasons the BPA proposal in the Administration bill is unacceptable to us.

BPA's Authority Should Not Be Extended to Retail Sales.

BPA should not have any expanded authority to make retail power sales and should continue to be limited to wholesale power sales. The Northwest Governors' Regional Review considered this question and concluded that Bonneville should "not sell directly to new retail loads, beyond the existing direct service industry loads, though it may sell through intermediaries whose transactions would be subject to state or local jurisdiction."

BPA's Subscription Contracts and Rate Case Determinations Should Not Be Allowed to Effectively Preempt Legislative Change for Years to Come.

Before I close, let me mention one more significant concern of our companies. While Congress debates the appropriate scope and content of legislation affecting BPA, Bonneville is offering new power contracts for sale of power at "cost-based" rates based on a forecast on power costs. The duration of these contracts, all effective in 2001, is expected to be from three to twenty years. However, based on Bonneville's subscription plan, the contracts will not include cost-recovery clauses that make power customers responsible for all generation-related costs if BPA's fish mitigation or other power costs increase. These contracts should require power purchasers to agree to pay all of BPA's power-related costs-with subscription power offered first to those willing to take longer term contracts. The basic "deal" envisioned in the Northwest Governors' Regional Review recommendations was that customers should agree to pay all of BPA's power-related costs in order to maintain the regional benefits of Bonneville power sold at cost-based rates. This is a basic fairness principle where those that want the benefits of BPA power sold at cost-based rates—which are expected to be below competitive power market prices—should agree to pay exactly that, all of BPA's power costs.

Additionally, BPA plans to complete a Wholesale Power Rate case during 1999 to set power rates effective for the five-year period from October 2001 through October 2006. BPA also plans to complete its transmission rate case before October 2001. If Congress passes legislation applicable to BPA rates set *after* 2001, such legislation may not apply until rates are set for the period after October 2006. During the intervening years, FERC may be unable to correct any power costs incorrectly functionalized to transmission, or, worse, exercise any new Federal Power Act authority to review BPA rates.

Congress should act now to ensure that Bonneville does not preempt Federal Power Act regulation through contracts. Moreover, any legislation subjecting BPA to Federal Power Act regulation should apply to any rates charged by BPA for the period commencing October 2001, regardless of when such rates were set.

We appreciate this opportunity to contribute to this very important legislative process. As you are aware, national electric power restructuring legislation is critical to the Northwest due to the large, dominant presence of the Federal government in both competitive wholesale electric power markets and in the highways of electric power commerce, the majority of the region's transmission grid.

Thank you very much for your time today. I would be happy to answer any questions that you may have.

Mr. BARTON. Thank you, Mr. Litchfield.

We would now like to hear from John Amos. Your statement, again, is in the record in its entirety. We ask that you summarize it in 5 minutes.

STATEMENT OF JOHN AMOS

Mr. AMOS. Thank you. The Northwest is home to nearly one-half of the U.S. primary aluminum smelting capacity. Bonneville Power Administration has been instrumental in establishing and sustaining the Northwest aluminum industry. The ten Northwest smelters provide, directly and indirectly, about 30,000 jobs. Aluminum production cannot exist without a large, reliable and low-cost source of power. Electricity can, sometimes, approach one-third of our production costs.

When I joined Reynolds in 1973 we had seven U.S. smelters. We are now down to three. Rising power costs made casualties of the

other four, all in the early to mid-1980's. Two of those plants, one in Alabama and one in Arkansas, were lost—along with several thousand jobs—when Federal PMAs ceased to allocate hydropower to us.

Bonneville encouraged the rapid development of a Northwest-based aluminum industry in the early 1940's, and again in the early 1950's. The aluminum industry has, essentially, paid the mortgage on the BPA system. This has clearly benefited the public power utilities. Since the 1980 legislation, it has also benefited the residential customers of investor-owned utilities. In fact, BPA may well not have survived the post-World War II period if the aluminum companies had not successfully made the tough transition from war-to peace-time production.

In 1995, BPA was in trouble as competitive power suppliers and marketers came in and offered the promise of rates better than those being offered by the BPA. Our company, in particular, signed a new contract with Bonneville for 100 percent of our requirements, for the period 1996-2001, thus continuing a relationship that we have had with Bonneville for over 57 years. Most of the other aluminum companies also followed suit for the majority of their loads.

All of that history of mutual benefit and partnership notwithstanding, BPA is currently casting a great deal of uncertainty on the Northwest aluminum industry that it essentially helped create. In developing its sales policy for the year 2001, and beyond, it has essentially told the aluminum industry that we are last in line; and has indicated to us that there would be little, if any, power for us. When our industry objected they did recraft their position slightly, but have not made any significant progress, in our view.

Bonneville was apparently persuaded by some of its public power and IOU residential customer groups that Federal power had become too precious to share with the direct service industries. In doing this, it is shrinking the pool of customers. The unlucky cast-offs are some of its oldest and—in the case of Reynolds—largest customers. We have paid Bonneville over $2 billion since the early 1940's.

We think Bonneville's long-range future relies in serving the needs of existing multiple customer groups. It should not be competing with private power for new loads. It should be dedicated to serving its historical, regional loads, first. It should not be giving priority to selling surplus hydro out of the region, at least not until after the requirements of its historical customers have been met. Additional surplus—and in years of high water there is substantial surplus—can be sold out of the region to the wholesale markets.

Regarding transmission policy, BPA transmission rates must be based on actual transmission costs. Power supply cost overruns, and the unlikely event that there are any, should not be allowed to migrate over to the transmission side, as some have suggested. Labeling those costs as "stranded costs" does not strengthen the case for such wire charges. The other utilities in the country regulated by the FERC cannot use their transmission systems, which are monopolies, to collect subsidies for their generation business. We should not be carving out an exception for the PMAs. Their generation business must be free-standing if it is to continue at all.

While protecting the Federal taxpayer is a legitimate objective, that can be done through contractual mechanisms negotiated with the beneficiaries of PMA-sold power. Bonneville, in fact, has a healthy contingency adjustment built into its next rate case for power sales. Having the additional ability to reach to the transmission system, as the administration's bill proposes, to collect dollars for non-transmission purposes from those who don't—and probably cannot—buy BPA hydro, is simply going too far.

Moreover, in the next decade, some of Bonneville's heaviest debt obligations will begin to retire. It should be an ever better bargain. We don't think that the generation side needs a helping hand from the transmission service customers.

We appreciate the opportunity to be here—and the invitation. We would be happy to answer any questions.

[The prepared statement of John Amos follows:]

PREPARED STATEMENT OF JOHN R. AMOS, GENERAL MANAGER, ENERGY & HEDGING, REYNOLDS METALS COMPANY

My name is John Amos. I am General Manager for Energy at Reynolds Metals Company, which is headquartered in Richmond, Virginia. Although we are perhaps best known in the kitchens of America as the makers of Reynolds Wrap aluminum foil, our company is the third-largest producer of primary aluminum in the world, behind only the Canadian company ALCAN and the U.S.-based ALCOA. As this "Top 3" list would suggest, the U.S. and North America are home to a substantial portion of the world aluminum industry, providing 143,000 family-wage jobs in the U.S. alone, including both primary and fabrication plants.

Importantly—for reasons I'll get to in a moment—the Pacific Northwest is home to nearly one-half of the U.S. primary smelting capacity. A single PMA—Bonneville Power Administration—has been absolutely instrumental in establishing and sustaining the Northwest aluminum industry. The 10 Northwest smelters, incidentally, are the only smelters in the Western half of the U.S., where much of our commercial and military aircraft industry—major consumers of aluminum—is concentrated. The Northwest smelters provide about 10,000 direct jobs and an estimated 30,000 or more indirect jobs.

Aluminum production, as you probably know, cannot exist without a large, reliable, and low-cost source of power. Electricity can be as much as one-third of our production cost. With economical power, you can compete and justify capital investments virtually anywhere in the world—even in North America where other costs, such as labor and environmental compliance, are high compared to some of our offshore competition.

When I joined Reynolds in 1973, we had 7 U.S. smelters. We are now down to three. Rising power costs made casualties of the other four, all in the early to mid-80's. Two of those plants—one in Alabama, and one in Arkansas—were lost after Federal PMAs ceased to allocate hydropower to us. TVA expanded heavily into coal and nuclear production, and the costs of those projects eventually made our Alabama smelter uneconomical. And a Reynolds smelter in Arkansas dependant on hydropower from the Southwestern Power Administration had to close after the agency refused to extend a critical contract. Thousands of employees lost their jobs as a result of these PMA actions. The economic impact on the communities involved was devastating.

Reynolds' three U.S. smelters today are in New York—where we buy hydropower from a state PMA (The New York Power Authority)—and in Oregon and Washington. The two Northwest smelters buy their power entirely from BPA, and always have over their nearly 60-year histories. BPA has historically maintained a dual mission of meeting rural electricity needs *and* acting as an economic development engine, largely for rural communities with limited industry. Bonneville has particularly encouraged the rapid development of a Northwest-based aluminum industry during times of war—in the early 40's and again in the early 50s—when aluminum needs are obvious. In this way, the aluminum industry has paid the mortgage on a large part of the BPA system—justifying earlier development, and at lower cost, of the Columbia River system's tremendous hydro potential. This has plainly benefitted the "public power" utilities and, since 1980 legislation, the residential customers of investor-owned utilities as well.

In fact, BPA may very well not have survived the post-war era if the aluminum companies, which provided so much of the agency's revenues in 1941-45, hadn't made the tough transition from war to peacetime production when military requirements slackened. To illustrate this point, let me quote a Federal analyst in Bonneville's own history book, *BPA: The Struggle for Power At Cost (p. 259):*

> "The revival of the [aluminum] industries and the restoration of [their] power revenues saved the Bonneville system from being wrecked by the private utilities . . . Public power, protected by the aluminum markets, was able to come in and build on top of the Bonneville system."

Again, in 1995, BPA was in trouble, as competitive power suppliers came in and offered the promise of better rates than BPA's own cost-based power offered. Our company signed contracts for 100% of our requirements from BPA between 1996 and 2001, feeling the long-term survival of both the agency and our relationship with it, mattered more than temporary savings. And most of the other aluminum companies followed suit for the majority of their power requirements. Recalling BPA's precarious position in 1995, I'll quote briefly from BPA's letter thanking us for our decision:

> "I am pleased to inform you that BPA has decided to accept your very attractive offer . . . The amount of business to which Reynolds Aluminum committed in its offer will be important to BPA's successfully managing its affairs during this period of transition.

All that history of mutual benefit and partnership notwithstanding, BPA is currently casting a great deal of uncertainty on the Northwest aluminum industry it essentially created. In developing its sales policy for year 2001 and beyond, it has essentially told the aluminum industry, "You are last in line," and indicated that likely meant little or no BPA power. When our industry responded that it was astonished and deeply disappointed, BPA recrafted its position slightly, but not yet significantly. It apparently was persuaded by some of its public power and its IOU residential customer groups that Federal power has become too "precious" to share with us. But by so crafting its new sales policy, BPA would be nullifying, by Administrative action, the very Federal law of 1980 that authorized BPA to *augment* Federal power to meet historic customer needs. Now, instead of doing that, it is shrinking the pool of customers—the unlucky castoffs being some of its oldest and, in the case of Reynolds, its largest and most reliable, customers.

We think there is a more balanced role this PMA can play, more consistent with its historic dual mission. Public power—all of whose requirements *would* be met under BPA's proposal—is a load that's in itself 40% industrial. In a sense, BPA is selecting out among industrial customers, ironically carving away those who are the most dependent on cost-based hydropower, and who paid the most for the system. Reynolds alone has paid over $2 billion since the 1940's.

Yes, there is a wholesale market the companies can access, but that market is still evolving, and so far is not projecting for 2001 low enough rates to be feasible for this industry. That may change, but it may not. BPA is in a position to make a concrete difference—*without putting at risk its other customers' enjoyment of some of the lowest rates in America.* We are urging them to do so.

We think BPA's long-term future lies in serving the needs of its *multiple* customer groups, with the regional and historical limitations grounded in statute still honored. It should not be competing with private power for new loads. It should be dedicated to serving these regional needs first, and its surplus power in good water years—which is quite considerable—should be marshalled for that task. It should *not* be giving priority to selling surplus hydro to out-of-region markets for the highest possible profit *before* the requirements of current in-region customers such as Reynolds have been met. By using non-firm hydro when available to serve us and other current aluminum industry customers, BPA need not actually buy external power to meet our needs. *Additional* surplus, for which there is no authorized regional need, can be sold into out-of-region wholesale markets.

In this way, BPA can be most relevant and beneficial to the people and economy of the Northwest into the next century.

One last point regarding transmission policy and the relationship with its power supply marketing. Fundamentally, BPA transmision rates must be based on real transmission costs. Power supply cost overruns, in the unlikely event that's ever an issue, should not be allowed to migrate over to the transmission side, as some have suggested. Labelling them as "stranded costs" does not strengthen the case for such a "wires charge." The other utilities in this country, regulated by FERC, cannot use their transmission systems, which are monopolies, to collect subsidies for their generation business—which is being separated and de-monopolized under the new competitive model. We should not be carving out an exception for the PMAs. Their generation business must be free-standing, if it is to continue at all. While protecting

the Federal taxpayer is always a legitimate objective, that can be done through *contractual mechanisms* negotiated with the beneficiaries of PMA-sold power. BPA, in fact, has a healthy contingency adjustment built into its next rate case for power sales. Having the additional ability to reach out to the transmission system—as the Administration's industry restructuring bill proposes—to collect dollars for non-transmission purposes from those who don't and probably can't buy BPA hydro is simply going too far.

Moreover, in the next decade, some of Bonneville's heaviest debt obligations will begin to retire, and it will be an even better bargain. We just don't think it needs a helping hand from transmission services customers in the unlikely scenario where BPA power rates *exceed* market alternatives for a few years. It's just bad policy, and an unfair advantage *vis a vis* private power.

The philosophy of public preference is deeply engrained in BPA, and while we are not today proposing a wholesale reconsideration, we have to question the freedom of public utility load to drop off the system—into the market—as some of them did in 1996, and then to drop in again, demanding system power at system costs for that returning load. This creates obvious planning problems for the PMA, and the "solution" to the problem they've come up with is to bump off our load, which stayed with BPA through thick and thin. I'm sure BPA does not like having to do this, but they evidently feel they are constrained by public preference doctrine. This dilemma may require examination by Congress.

Mr. BARTON. Thank you, Mr. Amos.

Our last witness for this panel and the hearing today is Mr. Shawn Cantrell, from the Friends of the Earth. We put your statement in the record in its entirety. We recognize you for 5 minutes.

STATEMENT OF SHAWN CANTRELL

Mr. CANTRELL. Thank you, Mr. Chairman. I appreciate the opportunity to be here. Going last is sometimes both a blessing and a challenge in trying to keep anybody's attention. But at least I, in theory, get the last word. I will try to summarize my comments.

For the record, my name Shawn Cantrell. I am the Northwest Regional Director for Friends of the Earth, based in Seattle, Washington. Friends of the Earth has had a deep and longstanding commitment to developing economically sound and environmentally sustainable energy policies. We have worked on energy-related issues with Bonneville Power Administration for over 25 years.

I would like to highlight today in my oral comments just a few of the numerous environmental impacts of BPA operations, and how electric restructuring legislation can, and should, address some of these impacts.

As Mr. Dingell pointed out earlier today, the Columbia River Federal Power System, which supplies most of the electricity marketed by BPA, causes significant environmental impacts on the natural resources of the Pacific Northwest. The series of dams inflicts 80 percent of all the human-caused mortalities on endangered salmon runs that spawn in the Snake River. These dams also contribute to the water quality problems in both the Columbia and Snake Rivers, which have been listed under the Clean Water Act as being limited in water quality.

It is, therefore, essential that as Congress looks at enacting comprehensive legislation to restructure the electric utility industry, that you make reforms to the Federal electric utilities. So that, in combination with continuing congressional oversight, BPA can improve how it is operated. It just does not make sense for BPA to continue selling electricity at below-market rates, while failing to adequately address the environmental impacts of its Federal power plants. Transition to market-based rates could reduce taxpayer li-

ability; inject greater fiscal responsibility, and improve the environmental performance of Bonneville Power Administration.

Chairman Barton, you had asked earlier regarding whether or not legislation is needed this year, or this Congress, as regards to electric utilities. Friends of the Earth recognizes that this is an incredibly complex, difficult issue. Legislation may or may not actually pass. Nonetheless, there significant steps that, we think, can be taken immediately by this Congress to try to reform PMAs—and Bonneville, specifically.

For example, BPA is currently establishing its power rates for the next 5-year period with its wholesale customers. These rate decisions will determine BPA's revenues through the year 2006, and will also position the agency for its long-term financial health. At a minimum, it is vital that BPA establish financing mechanisms that assure it will meet all of its financial costs and obligations. Yet BPA's proposed rates for this 5-year period pose a real danger that BPA will not collect sufficient revenues from its utility and industrial customers to cover the full cost of potential changes to the operation of the Federal power system, in order to comply with the Clean Water Act or the Endangered Species Act. It may not comply with the treaty obligations to Native American tribes; obligations to Treasury payments, and a number of other important issues.

For instance, recent analysis by Federal, State, and tribal biologists show that partial removal of the four Federal dams on the lower Snake River offer the single best chance to restore ESA-listed salmon in that basin. Yet, BPA's own computer models indicate that the agency's rate proposal has a low probability of generating enough revenue to meet Treasury payments, if such an alternative is selected later this year.

In contrast, if Bonneville raised its proposed rates to include the costs of potential fish and wildlife measures, such as partial dam removal, BPA's power rate could still be 25 percent below the projected market rate for electricity. Paying for fish and wildlife protection and restoration measures associated with hydroelectric dams should be fully incorporated as a regular cost of doing business for Bonneville Power. Numerous non-Federal utilities in the Pacific Northwest have successfully addressed the fish and wildlife impacts of dams they own and operate. BPA must live up to the same standards required of these non-Federal utilities.

In addition, since major cost-related decisions, particularly those related to ESA and the Clean Water Act requirements, likely will occur after BPA sets its rates for this case, the agency's reserve target must be robust enough to assure that BPA has ample resources to meet these future obligations without disruptive change. The agency cannot afford to set such low rates in the upcoming 5-year subscription period that it is unable to meet its obligations in the next 5-year period.

In summary, Friends of the Earth urges the committee to reform BPA, as well as other PMAs, and to address the significant impacts these agencies have on the electric market, the natural environment, and U.S. taxpayers.

I would be happy to answer or respond to questions. Thank you for the opportunity to testify.

[The prepared statement of Shawn Cantrell follows:]

PREPARED STATEMENT OF SHAWN CANTRELL, NORTHWEST REGIONAL DIRECTOR, FRIENDS OF THE EARTH

Good morning Mr. Chairman and members of the Committee. My name is Shawn Cantrell, and I am Northwest Director for Friends of the Earth based in our regional office in Seattle, Washington. I appreciate the opportunity to testify today regarding the role of Federal electric utilities—particularly the Bonneville Power Administration (BPA)—in competitive electric markets.

Friends of the Earth (FoE) is a national environmental membership organization dedicated to protecting the planet from environmental degradation; preserving biological, cultural and ethnic diversity; and empowering citizens to have an influential voice in decisions affecting the quality of their environment—and their lives. We have a deep and long-standing commitment to developing economically sound, environmentally sustainable energy policies. FoE's staff and volunteers have worked on energy issues related to BPA for over 25 years.

As this Committee develops Federal legislation to restructure the electric utility industry, there is a pressing need to address the issues associated with federal Power Marketing Administrations (PMAs). By their nature, PMAs are beyond the means of state legislatures and utility boards to regulate. Furthermore, U.S. taxpayers have a significant interest in how the PMAs are operated. According to a 1997 General Accounting Office study, the federal government has $24.4 billion in financial exposure from PMAs liabilities. BPA alone has over $17 billion of debt for which taxpayers are at risk.

BPA currently sells electricity at rates significantly below the national wholesale average rate, and plans to continue doing so; its proposed rates for the next five year contract period are 35% below the projections for future market rates. Residential electricity usage in the Pacific Northwest is 30% higher than the national average, in large part because BPA's low rates encourage customers to waste electricity and the resources which produced that electricity.

In addition, the Columbia River Federal Power System, which supplies most of the electricity marketed by BPA, causes significant environmental impacts on the natural resources of the Pacific Northwest. This series of dams inflicts 80% of all the human-caused mortality on endangered salmon runs that spawn in the Snake River basin. These dams also contribute to water quality problems in the both the Columbia and Snake Rivers, which have been listed as water quality "limited" because temperatures exceed limits prescribed by states in accordance with the Clean Water Act.

As Congress moves forward with electricity restructuring legislation, it is essential that you address the problems with the PMAs, including BPA. FoE urges the Committee to consider making market-based reforms that, in combination with continuing Congressional oversight, can improve how these federal electric utilities are operated. It just doesn't make sense for PMAs to continue selling electricity at below market rates while failing to adequately address the environmental impacts of the federal power plants. A transition to market-based rates can reduce taxpayer liability, inject greater fiscal responsibility into the PMAs, and improve their environmental performance.

It is for this reason that Friends of the Earth supports the Power Marketing Administration Reform Act (H.R. 1486). This bipartisan bill directs the PMAs to sell federally produced electricity at fair market value, provides additional funds for restoration of the natural resources degraded by federal power plants, and fosters the development of new renewable energy resources. H.R. 1486 recognizes and addresses the harm caused by PMAs to both the environment and federal taxpayers under the current system.

FoE recognizes that electric utility restructuring is a complex process and that comprehensive legislation will not be enacted immediately. None-the-less there are significant steps the PMAs can and should take in the interim to ensure that pending agency decisions do not foreclose future options. For example BPA is currently establishing its power rate levels for the next five year contract period with its wholesale customers. These rate decisions will determine BPA's revenues through 2006 and will position the agency for its longer term financial health.

FoE is deeply concerned that not only is BPA proposing rates significantly below market rates, the agency's proposed new rates for the next five years will likely be insufficient to fully cover all its costs and obligations. Such a revenue short fall would mean that either U.S. taxpayers or the environment of the Northwest are left to pay for BPA's short-sighted decisions.

At a minimum, it is vital that BPA establish financing mechanisms that ensure it will meet all of its financial costs and obligations. Yet BPA's proposed five year

rates pose a real danger that BPA will not collect sufficient revenues from its utility and industry customers to fully cover the costs of:

- changes in the configuration and operation of the Federal Columbia River Power System in order to comply with requirements of the Endangered Species Act (ESA) and the Clean Water Act (CWA);
- treaty obligations to Native American Tribes;
- the agency's debt repayment obligations to the U.S. Treasury;
- other potential new expenses such as major repairs or shut down at the Washington Public Power Supply System's (WPPSS) Nuclear Power Plant; and
- the agency's obligations under the Northwest Power Planning Act to encourage energy conservation and develop renewable resources within the Pacific Northwest;

For instance, recent analysis by federal, state and tribal biologists shows that partial removal of the four Federal dams on the lower Snake River offers the best chance to restore ESA-listed salmon runs in that basin. Yet BPA's own computer models indicate that the agency's rate proposal has a low probability of generating enough revenues to meet Treasury payments if such an alternative is selected later this year.

In contrast, if BPA raised its proposed rates to include the cost of potential fish and wildlife measures such as partial dam removal, BPA's power rate would still be 25% below the projected market rate for electricity. Instead of adopting such a prudent business-like approach to setting its rates, however, BPA is playing a risky game of chance that threatens the region's environment and U.S. taxpayers dollars.

Paying for fish and wildlife protection and restoration measures associated with hydroelectric dams should be fully incorporated as a regular cost of doing business. Numerous non-federal utilities in the Pacific Northwest have successfully addressed the fish and wildlife impacts of dams they own and operate. For example the Avista Corporation recently reached a settlement agreement for two large dams it owns on the Clark Fork River which generate roughly 60% of the investor owned utility's total hydropower. The settlement agreement provides for the relicensing of the dams, with Avista funding 27 specific environmental protection and restoration measures to mitigate impacts caused by those dams. BPA must live up to the same standards required of nonfederal utilities.

In addition, since major cost-related decisions, particularly those associated with ESA and CWA requirements, likely will occur after BPA sets its initial rates, the agency's reserve target must be robust enough to assure that BPA has ample resources to meet these future obligations without disruptive rate changes. BPA has not provided any detailed analysis of its ability to fund long-term fish and wildlife costs and meet it treasury payment obligations after 2006. The agency cannot afford to set such low rates in the upcoming five year subscription period that it is unable to meet its obligations in the next five year period.

As recent headlines in Northwest newspapers have highlighted, there is intense competition among investor owned utilities, public utilities, and direct service industry customers for the "right" to purchase power from BPA. This strong demand positions BPA to ensure that its rates for the upcoming five year contract period cover all its costs and accumulate ample reserves to meet its future costs. BPA can and should raise its rates enough to fully fund all its potential obligations while still remaining extremely competitive in the marketplace.

In summary, FoE urges the Committee to reform the operations of BPA and the other PMAs to address the significant impacts these federal agencies have on the electric market, the natural environment, and U.S. taxpayers.

Thank you again for the opportunity to present our views, and I would be happy to respond to any questions the committee may have.

Mr. BARTON. Thank you, Mr. Cantrell.

The Chair recognizes himself on behalf of the entire subcommittee, to ask questions of this panel.

As our DOE representative, Mr. Mazur, we have looked at the administration bill that has been proposed. I would assume that you either had input into it, or are at least cognizant what is in it with respect to the Bonneville Power Administration.

We understand that the Regional Review Commission, who was put together by the four States and their Governors, made a decision that Bonneville should not be able to sell to additional retail consumers. That Commission also made a decision that Bonneville

should not be able to acquire new generation capacity, except where its wholesale customers were willing to assume the risk of the investment of that new capacity.

However, in the administration bill, neither of those recommendations—as we read the administration bill—are adopted. Can you comment on why not?

Mr. MAZUR. I think the administration bill adopts a large fraction of the recommendations that were included in the report. In this case, we think there is no need for those restrictions in this legislation. This legislation is intended to create the climate for competition in the electricity industry. We think Bonneville has no plans to acquire assets, or to expand their operations. The Department has sufficient oversight of Bonneville—and so does Congress, for that matter—to ensure that occurs. So it is not necessary to have such restrictions in the legislation.

Mr. BARTON. Again, we understand the conditions you are here under. You are not the Secretary of Energy, the President, or the Vice President. Based on what you just said, we can assume that the Clinton administration's position is that the Federal Government should sell at retail, because Bonneville is a Federal agency.

Mr. MAZUR. Hmmm.

Mr. BARTON. I promised you before the hearing that there is a friendly audience here. So we are not trying to get into anything that causes a big issue. There are a lot of members of the subcommittee that think, to the extent possible, we ought to get the Government out of generation and transmission and selling electricity. We know that is not going to be totally possible.

So you have the Governors of four States make recommendations that, at least, prospectively tend toward the situation that any new generation is going to be privately owned. At the retail level, you are not going to have additional retail sales from the Federal agency. It just seems odd that the administration would—if not go against those positions—not adopt them.

Mr. MAZUR. I guess I don't see it as odd in the sense of crafting legislation to restructure the entire electricity industry.

Mr. BARTON. You really need to speak into the microphone.

Mr. MAZUR. Crafting legislation to restructure the electricity industry, you don't need to nail down every single detail as you go along. Part of what we are doing here is to try to have a set of rules for the road that would encourage competition for the entire industry. The expectation is that Bonneville, over time, will not expand their generating resources. And as additional competitors come into the market, Bonneville will become a relatively smaller player in the region. We didn't think there was need to legislate that.

Mr. BARTON. Okay. Mr. Amos, are you just representing Reynolds Aluminum, or do you represent a larger industrial consumer group?

Mr. AMOS. No, sir. I am here just for Reynolds.

Mr. BARTON. Okay. Now, I just scanned your written testimony, but I listened fairly closely to your oral testimony. If I understood your oral comments, I would conclude that Bonneville has basically said, "We appreciate what you have done for all these years, but

we are not going to go out of our way to work with you in the future.'' Is that a fair summarization of what you said?

Mr. AMOS. I think that on behalf of Reynolds Metals Company, we want to build on a relationship with Bonneville where we have bought all of our requirements from them from day one. I think that we will be successful in continuing to do business with Bonneville. But the bottom line is that we were told last fall, and certainly up through February, that the DSI load—the direct service industry load—would not be served until the public and others got what they wanted.

Mr. BARTON. So now do you support in the pending issue? Hopefully it is going to result in legislation that becomes law. Reynolds wants the right to go outside Bonneville and directly contract, or at least negotiate, for wholesale electricity.

Mr. AMOS. I will be forced to if I cannot buy from Bonneville. My preference is to continue.

Mr. BARTON. I want to know if you want that right. If I were to tell you, right now, we will draft the bill however you want it and the President will sign it, what would you want me to draft?

Mr. SAVAGE. I would want the freedom to buy wherever I could get the lowest-cost energy.

Mr. BARTON. That is the right answer.

I want to go back to Mr. Mazur, here. Under the current law, the FERC has limited authority to review the wholesale rates charged by Western, Southwestern, and Southeastern power marketing administrations. FERC's authority is limited to approving or disapproving a proposed wholesale rate. That authority is delegated to FERC by the Department of Energy.

Under current law FERC lacks statutory authority to approve rates, generally. Is it the administration's position that the FERC should have statutory authority to set PMA wholesale rates, including the ability to modify proposed rates in order to ensure full cost recovery?

Mr. MAZUR. No, is not the administration's position.

Mr. BARTON. I beg your pardon?

Mr. MAZUR. No.

Mr. BARTON. It is not the administration's position.

Okay, this is to Mr. Savage and Mr. Cantrell. There are some in the Bonneville service region that oppose a transmission surcharge on the grounds that the preference customers receive more benefits from Bonneville's low-cost hydropower system than they did. Were preference customers the only beneficiaries of the Bonneville system; or did the independently investor-owned utilities and DSI's also benefit significantly? That is a staff question. You can tell when I am reading a question. But I have asked it. I hope you all can understand it to give me an answer.

Mr. SAVAGE. Mr. Chairman, I think historically the DSI's have received power from Bonneville. The residential customers of the investor-owned utilities have received benefits in the form of sort of a bill-credit mechanism called the residential exchange. It is a cash credit, as opposed to direct power, which is being proposed under the current proposal. To that extent, I think, there have been historical benefits associated with those two entities, just as with the public agencies.

Let me go back to the proposal. Let me start with the premise. Being a Transition Board member, one of my charges is to forge consensus——

Mr. BARTON. Good luck.

Mr. SAVAGE. [continuing] including the parties. So we have been working with the parties to continue to winnow down the differences, particularly in these emergency costs funding. I want to make the statement that if we do all this right, none of these—whether it is a transmission surcharge or a power rate adjustment—should ever be triggered.

I think, right now, the difference is that we believe a power rate adjustment should go first, if there is one. I think what is at issue is where is it capped? Beyond that, at least with our initial proposal—and we are still working with parties; still exploring other options—is that a transmission surcharge would be subject to review and approval by FERC. They would take a look on how that charge is set and what form of charge. I don't know if that answers your question.

Mr. BARTON. Yes, that is helpful. Let me ask you another question. Your testimony talks about some river governance issues. That is really outside the scope of our legislation, No. 1. No. 2, there is no consensus on that issue. So is it appropriate—and I hope the answer to this is, "yes"—that we go ahead some of the electricity issues, and leave the river governance issues to other people?

Mr. SAVAGE. I raised the river governance issue because it was a fundamental part of the discussions in the comprehensive review. But for purposes of your discussion, no.

Mr. BARTON. Okay. I want to ask Mr. Amos, because I don't understand this, define for me what a preference customer is under the Bonneville definition?

Mr. SAVAGE. I would really rather defer that to Jack Robertson, who is here from Bonneville.

Mr. BARTON. If you will state your name and your title for the record.

Mr. ROBERTSON. Good afternoon, Mr. Chairman. I am Jack Robertson. I am Deputy Administrator of Bonneville. Preference was created, by statute, in the Congress. Under Federal law, we give preference to public utilities, municipalities, and co-ops for first right for the power from the Federal Columbia River Power System. Over the course of time, preference and access to DSI's have changed under contracts and under provisions of law.

Mr. BARTON. Thank you. So now that I know what a preference customer is, I have one before me here. Mr. Eldredge, I think represents a city in Idaho. I assume you are a preference customer?

Mr. ELDREDGE. We are, indeed.

Mr. BARTON. Okay. Some would argue that preference customers, like yourself, should be responsible for Bonneville's debts, because they receive most of the benefits of Bonneville's low-cost hydropower system. What do you say to that?

Mr. ELDREDGE. Well, we have been paying the debt for 40 years. The debt on Bonneville's system consists of two parts. One is the part, of course, for the generation. The other is the part for the transmission system. We have been paying our part of the genera-

tion debt for as long as we have had a contract with BPA. We also are paying part of the debt for the transmission system, although my particular city does not get Bonneville transmission service. Our transmission comes through Pacificorp.

Mr. BARTON. But you do get power transmitted to you that is generated by Bonneville, is that correct?

Mr. ELDREDGE. That is correct. So we are what is know as a GTA customer—general transfer agreement—customer. So we are, perhaps indirectly, paying both sides of the debt.

Now as far as who should pay the debt, I think all customers of BPA, including those who use the transmission system, have benefited from BPA, and therefore, should be responsible for paying the debt for that system.

Mr. BARTON. Now, was your city a part of this regional review?

Mr. ELDREDGE. Yes, we were.

Mr. BARTON. Okay. Does your city council wish to have the same right that Mr. Amos said that his company wishes to have—that is, the right to go out and try to find the best deal possible, whether it is inside or outside the current system?

Mr. ELDREDGE. Well, as a matter of fact, we do. BPA renegotiated our contract a couple of years ago. At that time they allowed us to buy up to 25 percent of our net needs on the open market. We have been doing that now, for almost 2 years. We have found that, oftentimes, the lowest cost alternative supplier is, in fact, BPA.

Mr. BARTON. Right.

Mr. ELDREDGE. We have also found that it is sometimes an IOU. We have developed relationships with other utilities. We have joined a group in Utah called Utah Associated Municipal Power Systems. We have been exploring, in the market, different ways to reduce our costs. So we have been doing that.

Mr. BARTON. Okay. If you notice a pattern, I am kind of working my way down here. I am trying to be an equal opportunity questioner.

Mr. Litchfield, your testimony expresses concern that Bonneville's subscription process will preempt legislative change. I quote, "Congress should act now to ensure that Bonneville does not preempt Federal Power Act regulation through contracts." So what do you suggest that we do?

Mr. LITCHFIELD. I suggest that this process, and in the process of drafting the legislation, it is important to make sure that Bonneville is aware of the changes and is not doing things in its contracting that would interfere with implementation of the restructuring legislation that you are debating.

There is a great number of business decisions that Bonneville is forced to make and has to make in the near future. We understand that. We are just particularly concerned that if they do them very expansively, by contract they could significantly constrain implementation of Federal statutes restructuring Bonneville.

Mr. BARTON. Could you briefly—and I mean briefly—either you or the gentleman who is the Deputy Administrator, explain the Bonneville subscription process? I am not real familiar with it.

Mr. LITCHFIELD. I would be happy to do that, Jack.

Basically, Bonneville enters into power contracts to sell power to customers in the Northwest. With the passage of the Northwest Power Act in 1980, they entered into 20-year contracts for sale of power. In 2001, those contracts expire.

The contracts, at that time, were a general umbrella contract. They involved no longer than 5-year rate commitments. So the customers in the Northwest that signed up for Bonneville power—primarily the DSI's and the preference utilities—had access to it. My clients did not. They signed contracts where they would pay the cost of power set by Bonneville in their rate cases, over the 20-year period.

In 2001, the deal is up. And everyone needs to redefine who is going contract for Bonneville power. The preference customers will be offered first subscription right. So the word "subscription" is meant to convey that you are given an opportunity to subscribe for Bonneville Power under certain statutory restrictions. If you take that right, you can sign and contract and get service from Bonneville. If you decline to take the right, then it will move on to some other class of customers.

What Bonneville has proposed is to deal first with the preference customers, the public utilities that desire power from Bonneville. When they have satisfied their requirements, they will then move to 1,000 megawatts of customers of investor-owned utilities. Residential and small farm customers, will then be allowed to contract for power. When they have been satisfied, if there power remaining, they will then offer it to the DSI's for sale. So that subscription process is what Bonneville is proposing to implement here, shortly.

Mr. BARTON. Well, what percent of Bonneville's current generating capacity is committed to these subscription contracts that are in effect right now? Do you know the answer to that?

Mr. ROBERTSON. All of our firm generating capacity is basically committed to the northwest region. There are some surplus sales that go outside the region that will be recallable within a certain number of years, by law. The real question here is how is the reallocation, or the resubscription, of that power is going to occur in the 5 years from 2001-2006. Actually, I think Mr. Litchfield's description is quite good.

Mr. BARTON. But you have 100 percent of available, plus peak capacity, committed on a 20-year contract, with a 5-year renegotiation for price?

Mr. ROBERTSON. We sell power on a firm basis, assuming critical water. In other words, we assume the worst water years on record—a sequence of them—and we say that we will have that reasonably available on a firm basis. What we sell in that subscription is that firm amount of water available in critical years. If you add it all together, it is about 8,000 megawatts. We have presold some of that amount.

There is a big question about average water years. In an average water year, another 2,000 megawatts of power comes down the river. In a really heavy year, another 2,000 can come down the river. So, basically we subscribe the critical or guaranteed water condition of the river. Anything that is left over, we sell to regional parties.

Mr. BARTON. What percent of your generating capacity is hydroelectric? You have some nuclear capacity.

Mr. ROBERTSON. Ninety percent is hydroelectric; approximately 10 percent is nuclear with one nuclear plant.

Mr. BARTON. How do you sell your non-hydro-based power?

Mr. ROBERTSON. The nuclear plant is considered part of the Federal Columbia River Power System. It is sold as part of an integrated group, on a firm basis too, in the sequence described by Mr. Litchfield.

Mr. BARTON. Okay. I was going to ask Mr. Cantrell a question. You talk about that you think the power ought to be sold at market rate. How does your group define market rate?

Mr. CANTRELL. The market rate would be defined—there is a number of ways. There are commodity markets in electricity. There is what is called the "COB"—the California/Oregon Border—where there is a price set on a regular basis. So similar to what if one of Mr. Litchfield's clients went and wanted to sign a contract with an energy supplier over a long-term basis, they would negotiate a contract. They would put out a requests for bid, or what have you.

We are suggesting that Bonneville can adopt a similar approach. We are not talking about privatizing Bonneville. As was pointed out, there would be a hugely complex process of trying to completely privatize the Federal electric utilities. But having them sell their electricity at market rates is, we feel, a useful and valuable step toward not only making the price of the power reflective of the cost going into it, but also generating revenues that could go toward a number of things.

Again, H.R. 1486, sponsored by Mr. Franks and Mr. Meehan, talks about the difference between the costs and the market rate. Half of that would go toward the Treasury repayment; 35 percent would go to fish and wildlife mitigation and restoration costs; and 15 percent would go into renewable energy development.

Mr. BARTON. Well——

Mr. ELDREDGE. Mr. Chairman, if I might add there? I think that your question is a fundamental one, in that the rate that is set in the region is primarily set in reaction to what rate Bonneville has set. When you own 40 percent of the generation in the region with one entity, you essentially make the market. So I think that it is going to be much more difficult to establish what the market rate is, when Bonneville owns so much of it.

Mr. BARTON. Well, the point that I was trying to make is a market rate is based on cost, and God blessed the Northwest with hydroelectric resources that the Federal Government saw fit to utilize. Even in a privatized situation, there are going to be lower-cost generators in the Northwest. So the market price will be lower.

I mean, Texas was blessed with oil and gas. I can buy gasoline for 90 cents a gallon in Texas because it is pumped out of the ground there; refined there, and we don't pay the transportation charges. Each region has a natural advantage. In the Northwest region it is hydroelectric power. I don't see a problem with low costs in the region where the power is generated.

So when we talk about these market averages, we start throwing in national averages and stuff. Some of the regions of the country don't have the natural resources that the Northwest does. I don't

want there to be a lot of extraneous factors put into what a market price is. That is why I was asking what Mr. Cantrell's organization defined as market price. That is all. But I think your point is an excellent one.

We have a vote on the floor.

Mr. ROBERTSON. Mr. Chairman? I just wanted to add a comment on the market-based issue.

Mr. BARTON. Okay.

Mr. ROBERTSON. It is a complex issue for a hydro system as we have. There are many, many products, and many, many markets.

Just 2 years ago, Bonneville, you may have heard, faced significant market challenges and was in some trouble. We cut $600 million in costs and really tried to get lean and mean again. We think we succeeded.

Mr. BARTON. Well not mean; lean.

Mr. ROBERTSON. We are meaner than we were. I resent, by the way, the Ronald McDonald analogy earlier.

But, the point is, 2 or 3 years ago, if you had asked the question about us going to market; the market was below our price, at that point. Had BPA been at the market price, it would have generated substantially less revenue. So, we hope we will stay below market. We expect that, but it is a volatile market on the West Coast. No one can be certain, in a complex, volatile market with a hydrosystem included, just exactly what the market will look like.

Mr. BARTON. I actually think that if we went to market—to use his term—the price would go down. I think that anybody that has a monopoly, no matter how lean—and to use your term—mean you try to be, you are going to have some costs that would not be there if you were in a truly competitive environment. So market price of the Northwest—you are probably going to have lower prices.

Mr. CANTRELL. Mr. Chairman? If I may just add one thought. Regardless of how one chooses to define market price and ease or difficulty of achieving it, at minimum—as I think I tried to convey in my testimony—we feel strongly that there are a number of costs: the actual costs to Bonneville; current ones that are being incurred that are passed on to either ratepayers, or at the expense of the environment, through fish and wildlife, air quality or water quality, as well as the potential future costs.

One example is that for fish and wildlife there are 13 different alternatives being considered for Endangered Species Act restoration activities in the Snake River. Bonneville's own analysis says of those 13, under their current rate proposal, only one of those would be able to have been funded, and have the Treasury payment made in high likelihood. They have a probability rating. They are still working through this. The most recent computer model that Bonneville generated, dated April 21, indicated that only one of the 13 would meet the Treasury repayment probability that I think all Members of Congress, as well as Bonneville, want to achieve.

Mr. BARTON. Good, thank you. Okay. Last question to Mr. Mazur.

Mr. ROBERTSON. Mr. Chairman, could I just pick up on that point? It is important that you understand that. We would like to submit to the record the data associated with our probabilities of

meeting fish and wildlife obligations. We take our fish and wildlife obligations quite seriously.

[The following was received for the record:]

The Boneville Power Administration is planning its power rate case based on the Fish and Wildlife Funding Principles adopted as administration policy in September of 1998. These Principles guide Bonneville to set its rates to ensure a statistical probability of meeting its Treasury payments of 80 to 88%, while considering the full range of thirteen alternatives noted by Mr. Cantrell.

Mr. BARTON. Well, that is outside. You are welcome; we will put in the record—that is outside the scope of our committee and our hearing. Those are significant issues. I would be very surprised if we addressed those kinds of issues in this bill.

Mr. ROBERTSON. The most important point is that we feel confident that we can meet our obligations for fish and wildlife. Therefore, we feel that we will not, in all likelihood, be triggering some of the aspects that are put in the provisions of the bill that have controversy in the region. That is really how it connects.

Mr. BARTON. Okay. I want to ask the last question—I have got to go vote here in about 10 minutes—to Mr. Mazur: Do you support a public preference for the Bonneville Power Administration to sell outside the region of the Bonneville region?

Mr. MAZUR. We believe that Bonneville should be able to maintain its existing preference power customers: the municipalities, the co-ops, and so on. We also think they should be able to sell retail to their existing retail customers.

Mr. BARTON. Okay, now I also want to ask you that same question on the Tennessee Valley Authority. I know this is a Bonneville panel, but you do represent the Department of Energy. Should the TVA be able to have power sales outside the region to public preference customers?

Mr. MAZUR. The administration's bill is pretty clear on TVA. We support a symmetric treatment for competition in TVA, where in 2003 the fence goes down in both directions.

Mr. BARTON. So you have a different position on Bonneville than you do on TVA?

Mr. MAZUR. In part, that reflects the fact that TVA would like to expand their operations, and Bonneville seems fairly content.

Mr. BARTON. But if we want to be consistent in a national comprehensive bill, shouldn't we be consistent in how we approach the various Federal electric utilities, and their various marketing strategies and abilities?

Mr. MAZUR. I think what we tried to do in this bill was to acknowledge the different historical situations that all the different PMAs find themselves in. Bonneville is in a somewhat different situation than TVA. We think our proposal reflects that.

Mr. BARTON. Okay. I want to thank this panel. We will have additional written questions. We ask that you reply very quickly, because we have several more hearings; but we hope to begin to put together a comprehensive package within the next month, or month-and-a-half.

The next hearing is next Thursday. Our working group is next Tuesday. This hearing is adjourned.

[Whereupon at 1:43 p.m., the subcommittee was adjourned.]

PURPA, STRANDED COSTS AND THE ENVIRONMENT

THURSDAY, MAY 20, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON ENERGY AND POWER,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. Joe Barton (chairman of the subcommittee) presiding.

Members present: Representatives Barton, Bilirakis, Stearns, Largent, Burr, Whitfield, Norwood, Shimkus, Wilson, Shadegg, Pickering, Bryant, Ehrlich, Bliley (ex officio), Hall, McCarthy, Sawyer, Markey, Pallone, Brown, Rush, Wynn, Strickland, Deutsch, and Dingell (ex officio).

Staff present: Cathy Van Way, majority counsel; Joe Kelliher, majority counsel; Curry Hagerty, majority counsel; Jeff Krilla, majority counsel; Miriam Erickson, majority counsel; Donn Salvosa, legislative clerk; Sue Sheridan, minority counsel; and Rick Kessler, minority professional staff member.

Mr. SHIMKUS [presiding]. Will the Subcommittee on Energy and Power come to order. I would like to welcome you all here. Mr. Barton will be a few minutes late, so he has left the committee in able hands, or at least in Republican hands, and we would like to thank you all for attending.

The subject of this hearing is electricity competition, PURPA, stranded costs and the environment. And I would like to recognize myself for 4 or 5 minutes. Chairman Barton is very specific on these 5 minutes.

I am looking forward to the testimony today, particularly the witnesses who are clamoring for more environmental regulations in the restructuring effort. I think it is important to acknowledge that those who are quick to attack the so-called grandfathered coal plants in Illinois and the Midwest also coincidentally have high-priced generation of their own. It just makes me wonder if the so-called environmentalists are really interested in protecting our air quality or making a buck.

I think this is a good hearing today because I think what we will find out is that in a restructured environment, when efficiencies are going to be required of the utilities to compete, that that will bring more environmental benefits than what we can do by legislating on our own. I think the record will speak for that.

With that, I am going to close my opening statement and then ask for Mr. Hall, the ranking member, for his statement. He is recognized for 5 minutes.

Mr. HALL. Mr. Chairman, I thank you and members of the committee. Today, of course, is another in a series of hearings, one that is particularly important, I think, dealing with issues involving the thing that we have talked about from the beginning, stranded costs, repeal of PURPA, and environmental issues, as the chairman has pointed out.

On stranded costs, I note that our witnesses vary widely in their views on the appropriateness of stranded cost recovery. However, I have noted that as the States have acted, and for the most part acted responsibly, in their determination on stranded costs recovery, the arguments have become less vocal at the Federal level.

I have great faith in the States to do the right thing, and we ought to be the least intrusive that we can be in this issue on the States. It seems to me that our guiding principle ought to be that if we are responsible for the incurring of the costs, then we have an obligation for the incurring of the stranded costs, costs that are legitimately, verifiably, and prudently incurred. This has gone on long enough for all of the them out there to have looked at their stranded costs. They have due notice that stranded costs and how they are proved up is going to be very important. It is the largest financial issue that we have had since I have been in this Congress, which means that there is enough money to be fair with the people that have provided us gracious living back through the ages pursuant to the contract that they had with this government.

So I don't see any reason not to be fair with them. I don't see any reason to be overly generous with them. I see a reason to take the testimony that we are taking here, to listen to the testimony. And for those of you who are here who have different opinions, you are rendering us a great service because then we get to look at all issues as folks that are more conversant with the facts of this legislation than we are. That is the way that we put a bill together.

I think, Mr. Chairman, we can largely remove ourselves from this obligation if we bury once and for all time this notion of imposing mandates on the States and a date certain by which they have to be carried out. PURPA presents a special case. Utilities incur significant obligations under a Federal law carried out by the States. We need to examine carefully how the States are providing for PURPA, stranded cost recovery, and what needs to be done to ensure that appropriately incurred costs are recovered. Then we will turn our attention to environmental issues, and the acting chairman addressed that very well.

Finally, Mr. Chairman, I want to take note of two close cases that bear close scrutiny by this committee, the decision last week by the DC Circuit Court of Appeals that ruled that the EPA has exceeded its authority in issuing certain air quality standards and that Congress has unconstitutionally delegated too much authority to the EPA, and a decision from the Eighth Circuit Court of Appeals in which the court raised the question of whether States can favor a utility's native load and curtailment situation without being in conflict with interstate commerce laws or whether they have to treat all transmission equally.

I think those are important cases. I tend to agree with the position that the court at this level has taken and would be anxious to follow it. The latter case that I discussed, which will likely have more direct implications on any utility restructuring legislation we might address, may raise a number of important questions about the extent of FERC's authority to bring about a workably competitive wholesale electricity market. If it is our intent to legislate before all appeals are exhausted, and I assume that it is, then we need to take the time to carefully consider the questions raised by the eighth circuit before we assume that we know what FERC's authority is now and what needs to be done to change it if it needs to be changed. As this court decision indicates, the ground may be shifting from us.

I think as a committee we have all of the questions that need to be addressed clearly in mind. We just don't have the answers. Let's be sure that we are right and go ahead. I yield back the balance of my time.

Mr. BARTON. Thank you, Congressman Hall, for that opening statement. I appreciate you and Congressman Shimkus starting the hearing on time. I was uncharacteristically delayed.

The Chair would recognize the distinguished full committee chairman, Mr. Bliley, if he wishes to make an opening statement.

Chairman BLILEY. Thank you, Mr. Chairman. I commend you for holding this hearing focusing on three issues, the Public Utility Regulatory Policies Act of 1978, PURPA; stranded costs; and the environment. All thee issues are important and must be considered when drafting a comprehensive electricity bill.

PURPA grew out of the oil crisis that gripped our country in the early 1970's. It was one of five pieces of legislation enacted as the National Energy Act of 1978 with the intent to encourage both energy efficiency and greater diversity in the supply of electricity.

Those were and are laudable objectives, yet some provisions of the act had unintended consequences. One such consequence was an incremental change from traditional cost-based to market-based pricing of electricity supplies, at least in the wholesale markets. That was a good consequence, disproving the myth that generation was a natural monopoly.

Implementation of PURPA has not been entirely successful. As we move to enact the comprehensive restructuring, a bill reforming PURPA is in order.

With respect to today's focus on stranded costs, I am interested to hear from the witnesses. Stranded costs are costs that could not be recovered in a competitive market. Competition doesn't create uneconomic costs, it just makes them apparent. As I understand it, the 21 States that have opened their markets to competition have provided a fair opportunity for utilities to recover their stranded costs. They have already done all the heavy lifting on this issue, and that is proper as they are in the best position to make these determinations. I commend the States for this.

Finally, I do not believe allowing consumers to choose their power supply would be harmful to the environment. In fact, the opposite is true. Innovation is a fundamental benefit of competition. I am convinced that retail competition leads to new environmental innovations. Today's electric power industry is not as efficient as it

can be. Competitive markets will foster competitive and flexible generators, such as gas-fired turbines that burn cleaner. Competition will also stimulate the use of technologies and services. The marketing of green power to consumers is one such innovative service made possible by competition. In addition, new technology such as real-time metering allow consumers to adjust their consumption pattern based on price. This helps the cost of conservation. A competitive electricity power market is good for the environment.

I thank you, Mr. Chairman, and again commend you for holding this hearing I look forward to hearing the testimony of the witnesses.

Mr. BARTON. Does that conclude your statement?

Chairman BLILEY. Yes.

Mr. BARTON. The Chair would recognize the distinguished ranking member of the full committee, Mr. Dingell, for an opening statement.

Mr. DINGELL. I thank you for your courtesy.

Mr. BARTON. You need to make sure your microphone is on, Mr. Dingell.

Mr. DINGELL. Since I said something else, I will say it again. Mr. Chairman, I want to thank you for your courtesy to me. I am always appreciative of your kindness.

Mr. BARTON. Do you ever not say something nice, Mr. Dingell?

Mr. DINGELL. I have said not nice things. I don't remember ever saying it to you.

Having made those observations, I believe that you are to be commended for holding this hearing because there are many controversial issues and most contentious questions involved in the debate over legislation to restructure the electric utility industry, none more difficult than those which lie before us.

Stranded costs have been an important element of nearly every State retail competition plan to date. In all but one State, we should note, stranded costs recovery has been an essential part of the bargain. There is one noteworthy exception: New Hampshire. The decisions of New Hampshire are now tied up in litigation over this very issue. I think that is a good warning to us.

When States address stranded costs, there are no difficult jurisdictional issues to resolve. Retail rates have long been considered the responsibility of the States. State competition plans bring together all affected parties; consumers, utilities, State regulators of all disciplines in the same forum at the same time to address the questions which are involved here. Negotiations ensue, and the parties have a natural interest in identifying and accommodating each other's concerns. As a result the best forum and the best decision are provided there.

But at the Federal level, we find that the issue is different. Stranded costs pose quite a dilemma. Federal legislation to mandate or simply encourage retail competition directly or indirectly can give rise to stranded costs and quite possibly some Tucker Act questions, something with which this committee is becoming increasingly familiar, but it may seem logical to require that such problems may be addressed in the same legislation.

The States have serious questions about federally mandated treatment of stranded costs. They may not indeed like what it is that we tell them to do, nor may the utilities, but it may seem logical to require such problems to be addressed in the same legislation. The States, I think, are to be properly commended for their worry over this matter, and we should listen to them.

There are further significant legal and policy questions about how the Congress might provide for recovery of stranded costs that are currently recoverable in State-regulated retail sales. All of this is puzzling to me. The stock conclusion amongst those who would mandate retail competition is to require the States to adopt competition and then to courteously defer to the expertise and the responsibility of the States in cleaning up the resulting mess. This is a most curious approach. We say, go out and make a mess, and then we will let you clean it up. Or we might say, we will make the mess, and we will let you clean it up.

I question the wisdom of this approach, and I am sure this issue is going to figure prominently in the committee's further consideration of restructuring legislation.

With respect to the environment, there have been a number of major developments since this committee last visited these issues in March 1996. Since that time 18 States have restructured their electric utility industry; the administration, the former subcommittee chairman, and many others have introduced Federal restructuring legislation including legislation specifically addressing environmental issues; and EPA and FERC have had key actions under the Clean Air Act and the Energy Policy Act overturned by the courts which is going to leave something probably of a mess either for those agencies, for the State utility regulators and the State environmental regulators, but also for this committee probably and the Congress.

Two fundamental questions are raised when we consider the environmental issues that relate to utility structuring: First, what are the environmental consequences, whether intended or not, of specific deregulating proposals? Second, should there be an explicit environmental component of restructuring legislation, and of what should it consist?

As to specific issues, what is the role of renewable energy technologies in a competitive market? Those who would like to see the Federal Government continue to support the use of such technologies have argued for the inclusion of a new device, the Renewable Portfolio Standard, RPS, in Federal restructuring legislation that would require a certain percentage of any supplier's electricity to be generated by renewable resources. This approach has gotten the support of the administration, the former chairman of this subcommittee, some States, and many others. Many others oppose this concept for a variety of reasons, not the least of which is that it is not well understood.

But even amongst those who have adopted this approach, there is a fair amount of disagreement over the details of a renewables standard. Such providers would be required to have what percent of their electricity supply to be from renewable resources? We could have a grand battle over that; 2, 7, 10, 20 percent? What will be the number? Should there be a required percentage increase over

time? And if so, what is the appropriate rate for increase? Should an RPS be a permanent fixture in the law, or should it sunset? Should an RPS count waste energy or hydroelectric projects as renewables? Should TVA, the PMAs, municipal utilities and rural cooperatives be covered by RPS? What would be the relationship between the investor-owned utilities if—and the munis and the co-ops and the publics if we go this direction?

I would remind you that I was a major sponsor of PURPA, which had a lot of this in and which has aroused wide criticism not only of the substance, but of the fact that the Congress did this. I would hope that the panels today would be able to shed light on this matter and that those who are pushing this idea will perhaps be able to defend it. It would be interesting to listen to.

Another interesting issue is whether or not the restructuring legislation should require electricity providers to disclose certain information about their generation sources and their impact on the environment. This is called green labeling. Some States, some sectors in the industry, and others have supported it, but here, too, there are disagreements about the scope and the depth of the information being disclosed and how should it be disclosed and by whom. And if we have all of this disclosure, are we going to need some truth-in-labeling requirement so that we can tell who is lying and who is telling the truth? I am interested in how or if our panels will think that green labeling should be pursued.

A third issue is the future of programs to promote energy efficiency and conservation, or what we would call the demand side of management. While many States require utilities to undertake programs that promote energy efficiency, the fate of these programs is unclear in a competitive electricity market. One proposed solution is a charge that would be placed on all customers and used to fund energy efficiency and conservation programs. The administration's legislation, which is largely a reregulation bill, has such a proposal, and it proposes that revenue from such a charge be placed into a public benefit fund which would be dispersed to the States so that they could pay for energy efficiency and conservation programs.

This raises a lot of interesting questions. Are we looking here at another source of revenue that could be diverted by the appropriators and by the budgeteers and to not be spent on what we have intended it should be spent for?

Mr. BARTON. Will the gentleman yield? The Chair would remind the distinguished gentleman that opening statements are supposed to be 5 minutes or less.

Mr. DINGELL. You have been most generous, Mr. Chairman. I hope that some of these questions will be read in my statement. I will ask unanimous consent that it be inserted into the record, because I know that you are concerned that we get a good record. And I hope that all here, including the audience, will read it because there is much wisdom here, and it would be helpful.

Mr. BARTON. We will put the next 10 minutes of questions into the record, Mr. Dingell.

Mr. DINGELL. It will be helpful, I think, in sinking this bill. Thank you, Mr. Chairman.

Mr. BARTON. Your questions are well put. We understand. We hope it floats the bill also.

[The prepared statement of Hon. John D. Dingell follows:]

PREPARED STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, today's hearing explores some of the most contentious and controversial issues in the debate over legislation to restructure the electric utility industry.

Stranded costs have been an important element of nearly every state retail competition plan to date. In all but one state, stranded cost recovery has been an essential part of the bargain. (The exception, New Hampshire, is tied up in litigation over this issue.)

When states address stranded costs, there are no difficult jurisdictional issues to resolve. Retail rates have long been considered a matter for the states, and state competition plans bring together all of the affected parties—consumers, utilities, and state regulators—in the same forum at the same time. Negotiations ensue and parties have a natural interest in identifying and accommodating each others' concerns.

But at the federal level, the issue of stranded costs poses quite a dilemma. Federal legislation to mandate or simply encourage retail competition—directly or indirectly—can give rise to stranded costs. While it may seem logical to require that such problems be addressed in the same legislation, the states have serious questions about federally-mandated treatment of stranded costs. There are further and significant legal and policy questions about how Congress might provide for recovery of stranded costs that are currently recoverable in state-regulated retail rates.

All of this is very puzzling, and the stock conclusion among those who would mandate retail competition is to require the states to adopt competition, and then courteously "defer" to their expertise in cleaning up the resulting mess. I question the wisdom of this approach, and I'm sure this issue will figure prominently in the Committee's further consideration of restructuring legislation.

With respect to the environment, there have been a number of major developments since this Subcommittee last visited these issues in March 1996. Since that time, 18 states have restructured their electricity industry; the Administration, the former Subcommittee Chairman, and many others have introduced federal restructuring legislation, including legislation specifically addressing environmental issues; and EPA and FERC have had key actions under the Clean Air Act and the Energy Policy Act overturned by the Courts.

Two fundamental questions are raised when we consider the environmental issues that relate to utility restructuring. First, what are the environmental consequences—whether intended or not—of specific deregulation proposals? Second, should there be an explicit environmental component of restructuring legislation, and what should it consist of?

As to specific issues, one is the role of renewable energy technologies in a competitive market. Those who would like to see the federal government continue to support the use of such technologies have argued for the inclusion of a "Renewable Portfolio Standard" (RPS) in federal restructuring legislation, that would require a certain percentage of any supplier's electricity be generated by renewable sources.

This approach has gained support from the Administration, the former Chairman of this Subcommittee, some states, and many others. Many oppose this concept for a variety of reasons, but even among those who have adopted this approach, there is a fair amount of disagreement over the details of a renewables standard. Should providers be required to have two, seven, ten or twenty percent of their electricity supply be from renewable resources? Should the required percentage increase over time, and if so, what is the appropriate rate of increase? Should an RPS be a permanent fixture in law or should it sunset after a number of years? Should an RPS count waste-to-energy or hydroelectric projects as renewables? Should TVA, the PMA'S, municipal utilities and rural cooperatives be covered by the RPS? I hope the panel will share their views on these matters today.

Another issue is whether or not restructuring legislation should require electricity providers to disclose certain information about their generation sources and their impact on the environment. This is often called "green labeling." Some states, some sectors of the industry, and others have supported it, but here, too, there are disagreements about the scope and depth of the information that should be disclosed, how it should be disclosed, and by whom. I am interested in how or if our panelists think green labeling should be pursued.

A third issue is the future of programs to promote energy efficiency and conservation, or what we call demand side management. While many states require utilities to undertake programs that promote energy efficiency, the fate of these programs

is unclear in a competitive electricity market. One proposed solution is a charge that would be placed on all customers and used to fund energy efficiency and conservation programs. The Administration's legislation proposes that the revenue from such a charge be placed into a "public benefits fund" that would be disbursed to states so that they can pay for energy efficiency and conservation programs. This prompts a number of questions. How would the rate be calculated initially? Could it be adjusted and, if so, when and how? I'd also like to get a better understanding of the formula that would be used to redistribute such funds to the states, whether some states would benefit more than others, who would administer such a grants program, and the cost of administration.

The fourth environmental topic that we are being asked to look at is the impact of deregulation on utility emissions and whether federal electricity restructuring legislation should be used as a pretext to further reduce emissions of pollutants and control greenhouse gases.

The Executive Branch has not always spoken with a unified voice on these matters. For instance, FERC in issuing its wholesale competition orders, declined to address these issues. The Administration's bill, on the other hand, is advertised both as a vehicle to pay the costs of the Kyoto Accord and a vehicle that would achieve a portion of the emissions reductions under Kyoto and the Clean Air Act. EPA has issued a SIP call that would impose a strict "cap and trade" program on utility NO_x emissions under authority they already believe they have, yet the Administration's electricity bill contains legislative language to "clarify" that EPA can implement a NO_x trading program. This is very confusing and leaves me with many unanswered questions that I hope our witnesses can shed some light upon.

I am also interested in hearing our witnesses' views on the implication of the recent ruling by the DC Circuit that called into question EPA's implementation of the Clean Air Act. I have not fully reviewed the decision yet, but I suspect it will drive more people to conclude that federal restructuring legislation is the best avenue for curing the problems raised by the courts.

I hope our panelists can shed light on the reasoning behind their positions on this issue. I have heard both economic and environmental reasons for addressing emissions issues on a restructuring bill. I am not sure that there is agreement even among supporters of tighter emissions controls that something needs to be done in the context of a federal restructuring bill. For instance, Governor Whitman of New Jersey, an advocate of increased restrictions on coal-burning utilities, chose to pass on addressing these issues in the context of utility restructuring, while the Governor of Texas just endorsed the inclusion of emissions caps in their electricity deregulation legislation. While some companies and environmentalists support pollution and carbon controls in federal legislation, others who are equally concerned about emissions have stated their belief that these matters are more germane to the Clean Air Act and should therefore be addressed in that forum. Still others have stated their concern that restructuring legislation not be "held hostage" to environmental issues.

Mr. Chairman, a significant number of interests will try very hard to turn electricity restructuring into a debate over Clean Air Act issues. They may succeed. But we need to consider whether emissions provisions are better addressed in restructuring legislation or as amendments to the Clean Air Act. How would any new emissions provisions in a restructuring bill work along side programs being implemented under the Clean Air Act? Given the North American Electric Reliability Council's concern about the potential adverse effects of EPA's SIP call on reliability, what impact would additional emissions restrictions and federally mandated competition have on reliability?

I look forward to hearing answers to these questions from our witnesses, and to learn more about their perspectives on all these matters. I yield back the balance of my time.

Mr. BARTON. The Chair would recognize Mr. Norwood of Georgia for an opening statement.

Mr. NORWOOD. Thank you very much, Mr. Chairman. I know that we are going to be hearing testimony about the Public Utility Regulatory Policies Act and environmental concerns from our witnesses today. I understand the importance of these issues, and I am glad that we are going have an opportunity, Mr. Chairman, to discuss them. However, I would like to take just a minute or 2 and focus my remarks on the third topic of our agenda, and that is stranded costs.

To be perfectly honest with you, I am very interested in this issue because it has such a large impact on the constituents of the 10th District of Georgia. To me, stranded cost is such an important topic that I believe we should have perhaps a hearing just on that alone. It is so important to me because if we don't handle this correctly, we could literally force dozens of towns and several companies in Georgia into bankruptcy.

Let me give you an idea of the magnitude of the problem that we face in Georgia. One of our nuclear plants, Plant Vogtle in Burke County, Georgia, is owned collectively by the Municipal Electric Association of Georgia; the Oglethorpe Power Company, which is a collection of cooperatives; and the Georgia Power Company, which is an investor-owned utility. Four towns in my district alone which are a part of MEAG, Elberton, Washington, Sandersville and Monticello, are in debt with Plant Vogtle to the tune of $150 million. Each of these cities has less than 7,000 people. If we leave these people stuck with a stranded cost of Plant Vogtle when we deregulate the industry, we will place a tax of over $5,000 on each person in each of these small towns.

Oglethorpe Power owes $2.7 billion on Plant Vogtle. It currently provides power to $3 million of Georgia Electric customers. If we pull the rug out from underneath them, 39 of 42 electric memberships in Georgia will most likely be forced to go out of business. Mr. Chairman, that is no way to increase competition in the marketplace.

Finally, Georgia Power, the State's largest supplier of electricity, would lose between $2 billion and $4 billion to stranded costs with Plant Vogtle alone. We all know who would be forced to pick up that tab. To be honest with you, I am not inclined to let that happen to Georgia ratepayers.

I said it before and I will keep saying it during these hearings, we have to address the issue of stranded costs in this country, especially nuclear stranded costs. We simply cannot leave these companies hanging out to dry.

I want you to understand, Mr. Chairman, that I have no interest in stranded costs that have occurred because of foolish mistakes made by the companies, but we were one of the last nuclear power plants built in the country at a time when the interest rates were 21 percent, at a time when the Federal Government moved to Georgia with regulations regarding building the nuclear industry. I can assure you, Mr. Chairman, we would have shut that plant down cold rather than pay 21 percent interest rates had it not been for the Federal Government. So I would just simply ask you with this hearing to let's really have one just on stranded costs so we can air out those issues.

I thank you very much, Mr. Chairman.

Mr. BARTON. I thank the gentleman from Georgia.

The gentleman from New Jersey, Mr. Pallone, is recognized for an opening statement.

Mr. PALLONE. Mr. Chairman, could I yield to the gentleman from Ohio, and then I will go after him?

Mr. BARTON. We will recognize the gentleman from Ohio.

Mr. BROWN. Thank you, Mr. Chairman, and thank you, Mr. Pallone. I thank you, Mr. Chairman, for holding this series of hearings on the future of the electricity industry.

In this session and the previous one, members have put forward a number of interesting proposals which have implications for the environment. Public benefits charge would provide funds for energy efficiency and renewable energy programs as well as assistance to low-income families. A Renewables Portfolio Standard would support a gradual increase in the use of renewables such as solar, wind, and biomass for electricity generation. Product labels that provide information on the source of generation and on the air emissions could give customers the opportunity to factor environmental or local economic criteria into their choices among electricity providers. Cap and trade programs for air pollutants could deliver benefits similar to the sulphur trading program. This committee should carefully review these and other options as we proceed, especially in light of the recent Supreme Court decision on EPA's implementation of the Clean Air Act.

Community choice is a new approach that I feel has the potential to benefit the environment. Community choice will allow governments to shop for electricity and energy services on behalf of their citizens. Basically, a level of government would act as an aggregator for its citizens after receiving approval through a vote of its governing body or through referendum. Towns, cities and counties are experienced in contracting for services and can obviously obtain greater clout in the marketplace than can an individual or a small business. Many local governments would be likely to respond to their citizens' environmental concerns by including electrical energy efficiency and renewable energy in their contracts with electricity suppliers. Any resident or business could also opt out and go shopping for a different electricity supplier on their own.

In conclusion, Mr. Chairman, a word on stranded costs. A number of electric utilities made decisions in the regulatory environment that have resulted in sizable stranded costs. For these companies to be competitive in deregulated markets, stranded costs must be dealt with appropriately. It is probable that States can handle this issue as they have been doing over the past several years, but we should consider whether a Federal role is necessary.

Mr. Chairman, thank you.

Mr. BARTON. Thank you, Mr. Brown.

Mr. Whitfield is recognized for an opening statement.

Mr. WHITFIELD. Mr. Chairman, thank you very much for continuing these hearings on this important subject matter. I have certainly not made a decision on what my overall view is on the restructuring issue, and these hearings are quite helpful in that regard, but one thing that I am quite certain about is that the legislation should not include any environmental title that imposes additional controls on electric power plants or attempts to penalize the coal industry any more.

I take this position because I believe that the existing Clean Air Act is working quite well. In fact, some of us believe that EPA has been too aggressive and has exceeded its legal authority quite frequently. In fact, the Federal court of appeals on May 14 agreed

with us and overturned the EPA's well-publicized air quality standards.

There are many people, particularly in the Northeast, that are concerned that energy deregulation might lead to increased power production at low-cost coal-fired power plants in the Midwest, but I noticed that in a letter to my colleague Mr. Pallone, dated June 15, 1998, Mrs. Browner and then Energy Secretary Pena stated that increased competition spurred by the Clinton administration's plan will itself strengthen incentives to use fuel more efficiently at both existing and new generating plants, thereby cutting emissions, costs, and fuel use.

Much of the concern about the increase of power plant emissions stems from the notion that emissions in ozone transport is a major problem for the Northeast in meeting air quality standards. I reject this argument, and I notice that Senator John Chafee of Rhode Island, who is considered one of the leading environment advocates in the Senate, really agrees with my position. Senator Chafee in a letter to EPA Administrator Browner dated April 16, 1997, which I will submit for the record, states, "contrary to a public belief too readily accepted without any evidentiary foundation, our problem does not come primarily from distant smokestacks in the Ohio River Valley. These charts and a similar analysis performed by the State of New Hampshire show that 67 percent or more of the ozone pollution affecting Rhode Island originates in the corridor of highly urbanized cities from Washington, DC, to Hartford, Connecticut. On the other hand, less than 10 percent of the ozone transport problem comes from the States located in the Ohio River Valley."

Now it seems to me that if the transport issue is not real, then something else is driving this idea of additional environmental controls. I believe these environmental issues stem from the high cost of electricity in other regions of our country. I believe this is an attempt to increase electricity costs in my part of the country to somehow level the playing field. I don't think this is good energy policy, good economic policy, or good environmental policy, and I for one will oppose the inclusion of these types of provisions in any comprehensive electrical deregulation legislation.

I yield back the balance of my time.

Mr. BARTON. We thank the gentleman from Kentucky.

Does the gentleman from New Jersey, Mr. Pallone, wish to be recognized now?

Mr. PALLONE. Yes, Mr. Chairman, thank you. I guess taking me out of order was actually maybe appropriate since I am now following my colleague from Kentucky, and I listened to what he had to say very carefully.

First of all, let me thank you, Mr. Chairman, for holding this important hearing. And I also appreciate you having invited the witness that I requested, Mr. Larry Codey of PSE&G, to testify before us today.

Today I am going to focus my remarks on environmental issues in the context of restructuring. Affordable, reliable, clean energy is essential for the economic and social well-being of our society. We must ensure that any and all decisions that we make with respect to restructuring at the Federal level do not require consumers to choose between cheaper energy and a degraded environment.

As you know and has been mentioned, a loophole in the Clean Air Act exempted older, dirty coal-fired power plants from complying with clean air standards. Consequently, emissions from these plants have traveled to the Northeast and negatively affect our air quality and public health.

My home State of New Jersey recently enacted restructuring legislation that will enable all State residents to choose their electricity supplier by August 1. The New Jersey plan recognizes the nexus between the electric power industry and the environment through a renewable energy mandate and environmental disclosure rules for energy providers. But it does not go far enough, in my opinion, to protect the environment and consumers. That is why the Federal Government must, in my opinion, as part of its overall restructuring efforts provide some national measures to protect the health, welfare, and environment of our Nation.

In the 105th Congress, I introduced legislation aimed at implementing uniform environmental standards that would apply to all electric generators. I plan to reintroduce an expanded version of my bill in the near future. The core of the bill is an emissions trading scheme that would establish caps to lower emissions nationwide and enable utilities to use market-based mechanisms, in other words, credit trading, to achieve these reductions in a cost-effective manner.

In the last Congress, every member in the New Jersey House delegation cosponsored my bill, and the bill attracted more cosponsors and bipartisan support than any other electric industry restructuring bill. I mention this because I think that support reflects the fact that consumers want to realize the economic benefits of electric industry competition, but not at the expense of being exposed to dirtier air.

Mr. Codey and other witnesses will elaborate upon the need for uniform Federal environmental measures when they testify as part of the second panel.

Mr. Chairman, I want to say that the congressional action to reduce emissions nationwide appears even more critical following a ruling that has been mentioned by some of my colleagues from last Friday by a U.S. appeals court involving the U.S. EPA's National Ambient Air Quality Standards for particulate matter and ozone. The decision indicates that the Clean Air Act may not provide sufficient authority for the EPA to establish these particular standards. Legislation such as my emissions training bill would provide EPA with this authority regardless of the impacts of this ruling. I would, however, like to hear from all of our witnesses in the second panel as to their thoughts on the potential impacts of this ruling.

The bill that I am to introduce also remains necessary for NO_X emission reductions despite the issuance of EPA's NO_X "sip call" rule. For example, the rule only applies to 22 States. My bill would be consistent with this rule and would ultimately create a level playing field for reducing emissions nationwide without yielding unfair price advantages to older, dirtier power plants. Moreover, the bill that I will be introducing will include meaningful and enforceable disclosure provisions, a kind of truth-in-labeling law for electric energy, among other provisions. Consumers want and, in my opinion, deserve to know the price, source, and environmental

content of the energy products and services that they are purchasing.

Finally, Mr. Chairman, I have heard frequent complaints that environmental compliance must adversely affect electric system reliability. I have long believed that taking steps to protect public health and the environment would not adversely affect electric system reliability, and our recent hearing on reliability did not provide any information to the contrary.

In addition, I am pleased that the Ozone Attainment Coalition is undertaking a study examining the impact of sip call compliance on electric system reliability. That study demonstrates that the needed NO_X reductions can be achieved in a cost-effective manner without jeopardizing reliability of the power grid.

I just want to thank you again, Mr. Chairman, for holding this important hearing, and I look forward to hearing from our witnesses. Thank you.

Mr. BARTON. Thank you.

The Chair recognizes Congresswoman Wilson for an opening statement.

Mrs. WILSON. Mr. Chairman, I ask unanimous consent that my statement be included in the record.

Mr. BARTON. Gladly, without objection.

The Chair would recognize Mr. Bryant for an opening statement.

Mr. BRYANT. Thank you, Mr. Chairman.

I am pleased that we are having this hearing on the important issues of PURPA, stranded costs, and the environment. I think that we need to carefully consider what the Federal role should be in these issues and how we can best handle them in an environment.

PURPA was enacted in 1978, as was earlier said, when we as a Nation were concerned about the possibility of diminishing energy supply and our dependence on foreign oil. Since 1978, we have developed technology which has enabled us to produce energy much more efficiently. PURPA played a role in that. However, I believe that PURPA has served its purpose, and it may well be time to repeal this legislation and move on to a competitive environment based on market prices.

Also, I do not want to see PURPA replaced by mandates forcing people to buy higher-cost renewable energy. I am, however, encouraged by the marketing of green energy, which allows customers to choose to buy energy from renewable sources.

I must also say that I would join with my colleague from Kentucky in his remarks about this subject and also from my colleague from Georgia and his remarks about stranded costs. I believe that we do have to consider as a part of our consideration of the stranded cost issue how individual States which have enacted restructuring legislation have dealt with stranded costs and, in doing so, evaluate what the Federal role should be. Certainly I would stand with my colleague from Georgia that these communities should not be hit with assessments that would be affected by handling these stranded costs in a wrong-headed way.

With that, Mr. Chairman, in the interest of time, I will yield back my time and look forward to these witnesses testifying today.

Mr. BARTON. I thank the gentleman from Tennessee.

We will now recognize the gentlelady from Missouri for an opening statement.

Ms. MCCARTHY. Thank you very much, Mr. Chairman. No one has to yield to me.

I want to thank you, by the way, for this very important hearing and particularly for the panel that you have put together, because when we look at the context of restructuring, and particularly this industry, the electric industry, we really have to take a look at the current regulatory structure that keeps us from having true competition. As you and I, Mr. Chairman, have talked many times, if we have that true competition and it thrives, then we will have efficiencies, and we will have a stronger economic opportunity, and we also will have a better environment, and our economy will continue to perk along, so it becomes a win-win for everyone.

So the hearing that you have put together today to take a look at the potential barriers in PURPA and with stranded costs and possibly outdated environmental regulations I think are critical. I am looking forward in particular to some of the topics addressed by the second panel that we will deal with. Restrictions that are going to hinder and already hinder efficient and environmentally cleaner fuels being used and whether that is going to take Federal legislation or whether the States themselves can handle that, I think, is a critical issue for us to determine on this subcommittee.

So I look forward to that and to addressing the laws such as the Clean Air Act and PURPA and others that are meant to encourage the development of more efficient and cleaner and better-burning fuels, but in some cases have become impediments to that. I think that if we can resolve that particular issue, the larger question of deregulation will become an easy one for us because we would have put together the structure that we need to make sure that we have the economic incentives there to make this again a win-win.

So thank you very much, Mr. Chairman, for the opportunity to participate in this today.

Mr. BARTON. Thank you.

The Chair would recognize Mr. Largent of Oklahoma for an opening statement.

Mr. LARGENT. Thank you, Mr. Chairman. I would make a brief statement and thank you for holding this hearing.

I think these issues that we are dealing with this morning are very important; PURPA, stranded costs, and the environment. I am particularly interested in the second panel hearing from Mrs. O'Neill from Green Mountain Energy to hear exactly why they are in business. There is no government mandate that they be in the renewable business up in Burlington, Vermont, and yet they have, it seems to me, a very innovative product that a number of their customers enjoy and appreciate without any government mandate. So I think that will be enlightening testimony.

Also, I want to welcome Denise Bode, one of our commissioners from Oklahoma, one of my political heroes, a very articulate, energetic, free-market competition regulator from the State of Oklahoma. I think that hearing her testimony this morning will be interesting in that, and I have heard many of my colleagues in their opening statement talk about the low cost in their States and wanting to protect their low rates whether they be in Idaho or Ken-

tucky or wherever. What is interesting is that Oklahoma, as many folks know, is a low-cost State, yet has been a leader in this move toward electric competition. In fact, as is often the case, we now see that Texas and Arkansas are following the lead of Oklahoma in moving toward electric restructuring.

So, Mr. Chairman, I thank you for holding this hearing and look forward to the testimony.

Mr. BARTON. We are always encouraged to follow Oklahoma in our State.

The gentleman from Ohio, Mr. Strickland, is recognized for an opening statement.

Mr. STRICKLAND. Thank you, Mr. Chairman.

I would just like to take a moment to associate myself with remarks made by both Dr. Norwood and my good friend from Kentucky Mr. Whitfield. We know what the questions are. I look forward to hopefully getting some answers from our witnesses today. With that, I yield back the balance of my time.

Mr. BARTON. We thank you.

The distinguished vice chairman Mr. Stearns for an opening statement.

Mr. STEARNS. I thank you, Mr. Chairman. I ask unanimous consent that my opening statement be made part of the record.

Mr. BARTON. Without objection.

Mr. STEARNS. As you know, Mr. Chairman and my colleagues, I have a bill dealing with PURPA reform. It is H.R. 1138, the Ratepayer Protection Act of 1999. I am pleased this morning to announce that we have 19 members that also see the need for this reform and have joined me in cosponsoring this legislation.

I won't go into the history of PURPA, but it started under the Carter energy plan. Basically, back then everyone was convinced that we had run out of natural gas and that the price of oil would soar to $100 per barrel or even more by the year 2000. So in a sense we have not seen that happen, and competition has brought the price down.

Congress sought in drafting PURPA to ensure that the customer would pay no more for PURPA power than it would have to pay for other power. This did not work out that way. PURPA has been responsible, unfortunately, Mr. Chairman, for scores of long-term contracts. Over 60 percent of PURPA contracts will not expire until after the year 2010 at prices far in excess of what it would cost utilities to generate to purchase the same amount of power. According to one study PURPA is costing consumers nearly $8 billion per year in excess electricity costs.

I think PURPA, as my colleague from Oklahoma pointed out, stands in the way of a more competitive electric industry. A natural gas-fired project was found to qualify for PURPA's benefit because it produced distilled water in addition to electricity, even though the distilled water was flushed down the drain. So there are examples of people gaming the system out there.

Requiring utilities to purchase new PURPA power when they may no longer have retail customers to whom they can resell power absolutely makes no sense. We have had 20 years of experience behind us, and it is clear that PURPA has outlived its usefulness.

So, Mr. Chairman, I applaud you for this hearing. I look forward to hearing from our distinguished panel on PURPA as well as the issues of stranded costs and the environment. Thank you for your courtesy, Mr. Chairman.

[The prepared statement of Hon. Cliff Stearns follows:]

PREPARED STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Thank you, Mr. Chairman. I am pleased that we are holding this hearing today to obtain feedback on the issues of stranded costs, the environment, and PURPA. I am particularly interested in the PURPA aspect of this hearing. In fact, I am a sponsor of PURPA reform legislation, HR 1138, the Ratepayer Protection Act of 1999. Nineteen members also see a need for PURPA reform and have joined me in cosponsoring this measure.

More than 20 years ago, the Public Utility Regulatory Policies Act (PURPA) was enacted as one of the original components of the Carter Energy Plan. Convinced that we were running out of natural gas and that the price of oil would soar to $100 per barrel or even more by the year 2000, Congress passed PURPA to encourage conservation and promote the use of renewable fuels to generate electricity. It did this by establishing a special class of power generators known as qualifying facilities ("QF's") and it required utilities to buy all the electricity that these facilities wished to sell at a price determined generally by federal regulators and specifically by state regulators.

Congress sought, in drafting PURPA, to ensure that customers would pay no more for PURPA power than they would have to pay for other power. It did this by providing in PURPA that the maximum price for electricity from QF's would be the cost that the purchase utility would have incurred if it had generated the electricity itself or had purchased it from a source other than the QF.

Today, we know better. Natural gas supplies are abundant. Oil prices are not skyrocketing, and the vast majority of QF's use coal or natural gas, not solar, wind, or geothermal energy to generate electricity. Meanwhile, PURPA has been responsible for scores of long-term contracts (over 60 percent of PURPA contracts will not expire until *after* the year 2010) at prices far in excess of what it would cost utilities to generate or purchase the same amount of power. According to one study, PURPA is costing consumers nearly $8 billion per year in excess electricity costs.

PURPA also stands in the way of a more competitive electric industry. By granting special status to some electricity generators, but not others, PURPA encourages the creation of uneconomic projects just to qualify for PURPA benefits. In one recent case, for example, a natural-gas fired project was found to qualify for PURPA's benefits because it produced distilled water in addition to electricity, even though the distilled water was flushed down the drain.

Moreover, PURPA was premised on utilities continuing to be the exclusive suppliers of electricity to all consumers within their franchise territories. In many states today, customers have the ability to choose their own electric supplier. Requiring utilities to purchase new PURPA power when they may no longer have retail customers to whom they can re-sell power makes no sense.

With 20 years of experience behind us, it is clear that PURPA has outlived its usefulness. I believe we should do three things to reform PURPA: (1) prospectively repeal PURPA's mandatory purchase obligation on the date of enactment, so that there would no longer be any new obligations to purchase this power; (2) respect the sanctity of existing PURPA contracts; and (3) ensure that purchasing utilities would continue to be permitted to recover the costs of existing PURPA contracts as long as these contracts are in effect.

I know we all seek to achieve the most efficient and most cost-effective means of electric generation for America's consumers and I believe my measure represents a broad based consensus on the important issue of PURPA. I would urge that the principles in HR 1138 be included in whatever electric industry legislation might be considered by this Congress.

I look forward to hearing from our distinguished panelists on the PURPA question, as well as the issues of stranded costs and the environment. Thank you, Mr. Chairman.

Mr. BARTON. Thank you, Congressman Stearns.

The Chair would recognize Mr. Pickering for an opening statement.

Mr. PICKERING. Mr. Chairman, thank you. I would commend you again for having this hearing and also putting together the working group that is making progress as we try to complement the work being done by the committee in these hearings.

The hearing today is very important as we look at the best way to go forward. I think on PUHCA and PURPA, as well as other barriers to competition, the question is have they outlived their usefulness; is it time for them to be put aside or repealed; and then, if anything, what is put in its place.

On the stranded costs, the question is who is best able from a jurisdictional point of view to address those issues, and from an environmental perspective, is a pro-market-competitive policy more efficient and effective and more quickly able to bring us the environmental benefits that we all hope to see?

I look forward to the testimony of the panel and continuing to work with the consensus on this issue as we go to a competitive policy.

Again, thank you, Mr. Chairman.

Mr. BARTON. Thank you.

The Chair recognizes the distinguished gentleman from Arizona for an opening statement.

Mr. SHADEGG. Thank you, Mr. Chairman. I would ask with unanimous consent that my statement be placed in the record.

Beyond that let me simply say that I commend you for holding this hearing. I think it is vitally important that we look at the barriers to competition which the Federal Government has erected. I believe PURPA to be one of those barriers. I think that as technology is pushing restructuring forward, it is important that the Congress move and move expeditiously to get those Federal barriers out of the way. I think that is an obligation on the Congress for the benefit of the American people.

Another topic of this hearing is a question of environmental concerns. I think several of my colleagues have already raised the point that while we would all agree that it is our goal to protect the environment and to ensure it is not damaged in any way, there is a legitimate question as to what is the best mechanism to achieve that goal. I think you can look at many mandatory policies which the government has imposed and discover that though well-intended, they have, in fact, done more harm than good.

I am very interested to hear from those today who are involved in providing green power, power which protects the environment, but not doing so as a result of a government mandate. I am anxious to hear how the absence of mandates might lead to a more innovative answer to some of those environmental concerns.

Again, Mr. Chairman, I commend you for holding the hearing and yield back the balance of my time.

Mr. BARTON. Thank you.

The Chair would recognize the distinguished chairman of the Subcommittee on Health and Environment, Mr. Bilirakis, for an opening statement.

Mr. BILIRAKIS. Thank you, Mr. Chairman, and good morning.

Mr. Chairman, I certainly associate myself with Mr. Stearns comments particularly, but, Mr. Chairman, I also want to commend you and thank for not only this hearing, but the many in a series

of hearings that you are holding. There are an awful lot of questions, and the only way that we could even have any opportunity to learn is to sit in on hearings. I just hope that we all can be open-minded, otherwise what is the sense of holding hearings?

And having said that, Mr. Chairman, I look forward to some of the testimony of the witnesses. Thank you.

Mr. BARTON. The Chair would see no other member present who has not been recognized. The Chair would recognize himself for an opening statement and apologize in advance for its brevity. I am not up to the standards of some of the statements that we have heard this morning, but I will get better at the next hearing. We want to increase the length of my hearing and my statement.

I would like to welcome everyone today for our hearing on PURPA, stranded costs, and the environment. This is the fifth hearing in a series of hearings on electricity deregulation or restructuring. These hearings will hopefully serve as a framework to produce a comprehensive bill to reform the electricity industry in the United States of America.

I might say that our next hearing next week is going to be on consumer protection. That will be next Wednesday, May 26, which is somewhat unusual because most of our hearings have been on a Thursday.

After many decades of operating in a competitive, but regulated market structure, the electricity utility industry is facing significant changes today both from new generating and transmission technology, but also from shifting public policy perspectives with respect to competition and regulation.

The current system of the utility regulation is untenable, in my opinion. I am convinced that market forces can and should replace the existing regulatory structure wherever possible. Existing regulation is an imperfect substitute for a true marketplace and real self-regulating market forces will result in a more efficient allocation of the country's resources and should provide customers with lower prices than we have today.

But before we abandon regulation for competition, it is important and imperative that we examine the Federal and State laws which may be barriers to an efficient marketplace. One of those laws that we will look at today is the Public Utility Regulatory Policy Act. Although competition was not its primary purpose, without PURPA we would not be discussing competition in the electric industry today. However, some of the things that PURPA did to promote competition may no longer be necessary in today's marketplace. So as we move to promote full retail competition in the comprehensive bill, reform of portions of PURPA is in order.

Similarly, transitional issues like stranded costs must also be addressed in moving to retail competition. My studies indicate that States that have acted or are considering acting on electricity are addressing stranded costs, but it appears that some Federal role may still be necessary.

Again, I want to thank our witnesses today. I appreciate all of the opening statements. I think the sincerity and the length of the opening statements does indicate that people are taking this issue seriously, and I think that is a very, very good thing.

The Chair does recognize that we have a vote on the floor. Seeing no members present to make an additional opening statement, we are going to recess, as it would not be fair to our witnesses to have no one here but whoever is actually in the Chair. So we are going to recess until 11:15. I would encourage all members to be back by 11:15, at which time we will commence our first panel.

[Brief recess.]

Mr. BARTON. The subcommittee will come to order. Before we impanel our first panel, there are two members here who weren't here at the end of the opening statements. The Chair will recognize Mr. Wynn and then Mr. Markey for what will hopefully be brief opening statements.

Mr. Wynn.

Mr. WYNN. Thank you, Mr. Chairman, for your courtesy. In the interests of time, I will defer opening statement, and I would like to submit one for the record at a later time.

Mr. BARTON. Thank you, Congressman.

Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much. And I thank you for putting together this excellent panel today. As we know, electrical generating facilities create one-third of the greenhouse gases that are produced in the United States. I think for some people that oftentimes comes as a surprise that such a small number of plants in each State, compared to the number of automobiles and industrial facilities and homes, create such a huge percentage of the greenhouse gases.

Much of what we talked about in the 1970's during the development of the Energy Policy Act then and right through the 1990's has tried to focus upon this issue so that we can make a transition in the 21st century to a day where by the end of this coming century we really do have a renewable strategy that can supplant the fossil fuel dependency which the 20th century was so renowned for.

So my hope is that as we discuss any restructuring legislation, that we find ways in which to promote new, more efficient, less polluting technologies so that as we move forward, we have articulated a strategy that continues the progress which we made so far. Who could have predicted in the 1970's that renewable technologies would have made so much progress over the last 20 years, but simultaneously the cost of fossil fuels would have dropped so much? That is just so completely contrary to everything which we heard in the 1970's. They have made the progress which they thought that we could make, but another unpredicted event occurred simultaneously.

So I am interested in exploring ways in which we can develop emerging renewable sources through a renewables portfolio standard, through tax credits, through public benefits charge; some way in which we as public policymakers continue to advance the progress which we made over the last 20 years and then export these technologies around the globe, which clearly, looking at China, India, Africa, South America, are going to be needed in order to avoid an environmental catastrophe.

I thank you, Mr. Chairman, for holding this hearing, and I yield back the balance of my time.

Mr. BARTON. Thank you, Congressman Markey.

We would now like to ask our first panel to come forward. We should have name plates for you. We have Ms. Denise Bode, who is a commissioner on the Oklahoma Corporation Commission. We have Mr. Richard Andelman, who is with BJ's Wholesale Club. He is their energy systems and utility manager. We have Mr. Ross Ain, is that correct, who is president of the East Coast Power; and we have Mr. Arthur Adelberg, who is the executive vice president of the CMP Group.

The Chair would recognize Mr. Largent to introduce more formally Commissioner Bode.

Mr. LARGENT. Thank you, Mr. Chairman. Again, I would just say what I said earlier, that Denise and I have been friends for a number of years. We met first when she was working with the IPAA. She is a very energetic advocate for a variety of causes, but most importantly is very much a procompetition, free-market thinker, and somebody whose opinion I really value and is now a corporation commissioner in the State of Oklahoma, as I said earlier, a low-cost State moving to a restructured electricity market, which I think is an interesting phenomenon given the anxieties that I hear a number of our members from low-cost States, as they talk about moving to a restructured environment, worried about the ability to maintain their low rates, and yet Oklahoma is leading in that area.

So again, I want to welcome Denise and look forward to her testimony.

Mr. BARTON. Thank you, Congressman.

We are going to recognize each of you in turn. Your entire statement is in the record in its entirety. We are going to ask that you try to summarize sides them in 7 minutes. That is what the little lights are all about.

So, Ms. Bode, we recognize you, and we welcome you to the subcommittee.

STATEMENTS OF DENISE A. BODE, COMMISSIONER, OKLAHOMA CORPORATION COMMISSION; RICHARD ANDELMAN, ENERGY SYSTEMS AND UTILITY MANAGER, BJ'S WHOLESALE CLUB, INC.; ROSS AIN, PRESIDENT, EAST COAST POWER; AND ARTHUR W. ADELBERG, EXECUTIVE VICE PRESIDENT, CMP GROUP, INC.

Ms. BODE. Thank you so much, Mr. Chairman. I am Denise Bode, and I am a member of the Oklahoma Corporation Commission.

Mr. BARTON. You really need to put the microphone very close to you because they don't pick up very well.

Ms. BODE. Thanks.

The Oklahoma Corporation Commission is a three-member panel elected statewide that regulates all utilities, oil and gas exploration, and production and transportation, underground storage tanks among other things. I am here at the request of the committee to discuss the progress toward the electric industry restructuring.

Before I discuss our initiative on electricity, though, I want to mention that Oklahoma has promulgated new rules to restructure the natural gas industry to bring competition and choice to consumers. In fact, we are in the unbundling process right now with

competitive bidding starting this year. I raise this issue because I believe the unbundling of the gas industry will increase competition in our gas utility industry and will poise the gas industry in our State to supply the fuel of the future, which we believe is natural gas, for electrical generation. So we really believe that this is an important step forward in terms of preparing our State and our energy resource base to help also provide energy resources in the future. I know Chairman Bliley's keen interest in this issue and want to offer to keep the staff and committee updated on our initiative in this area.

Let me share with you a little background. Oklahoma is the third largest gas-producing State in the Nation, yet we only use 30 percent of the gas that we produce. We export 70 percent of our natural gas. So we believe that we are perfectly positioned with an abundant feed stock to fuel new higher-efficiency gas-fired electric generation facilities. In fact, we have several such new facilities on the drawing board right now in Oklahoma.

Oklahoma also has, as Congressman Largent mentioned, one of the lowest costs for electricity in the country. Currently electricity prices in Oklahoma are approximately 19 percent below the national average and more than 50 percent lower than such States as California and Pennsylvania. Although the prices charged by electric providers are among the lowest in the Nation, we believe that the issues driving restructuring in Oklahoma are a little different than those found in States where prices are higher, and thus we believe that there is a need to move ahead cautiously and make sure that we are better off as a result of what we do.

But we do believe that it is vital, and that is why our legislature and our commission has taken the lead among low-cost States in not standing on the sidelines and, in fact, providing leadership for the restructuring effort. We passed our electric restructuring law on April 25, 1997. We hope to have choice in place by July 1, 2002. And we have ongoing right now a series of task forces looking at over 100 issues including operations, market structure, territorial and competitive issues, regulatory, legal, revenue and taxation. Many of those key issues will be dealt with, and we will be issuing a report on the task force by October of this year, October 1999.

One of the key areas that they have been working on, one of the first things that came out, is with regard to the creation of an independent system operator. I mention that because I believe that this issue is one of the key issues in terms of system reliability. I want to share with you that we have just learned in Oklahoma that reliability is particularly critical. With the tornado that hit—or tornadoes, I should say, that hit Oklahoma, it was interesting because one of the tornadoes went right up the power line to one of our major power plants and knocked down some 17 steel towers going up there to our senior power plant, which, by the way, is a coal-powered plant in the northern part of the State. It required quick action on the part of the system operator at Oklahoma Gas and Electric to back off that power and to use a peaking plant, a gas peaking plant near Seminole, to provide that power. That, in fact, will be the case. Until August of this year, there will be a gas fired-plant providing much of the electric power until they can get those lines back on.

But again, that underscores for me and I think for everyone here the importance of making sure that whoever is managing that system and is managing how those give and takes in the electric generation facilities work, making sure we have a good system in place, because it did work very well this time, and we need to make sure whatever new system is put in place does work equally well.

In Oklahoma we probably have one of the most difficult problems with taxation of local facilities. That is an issue that we need to deal with. I fully support the concept of restructuring to provide competition and customer choice. I believe we must have a reasonable transition of our electric industry from monopoly regulation to one of not just competition, but managed competition. Restructuring of the electric industry will be valuable to all consumers in the long run if it is allowed to occur properly.

So what is the role for Federal legislation in this process? The Federal Government should focus its effort on those issues and policies beyond the grasp of State authorities. Of paramount concern should be the establishment of clear and consistent regional transmission policies. Congress should also remove existing barriers to restructuring in current law, not by piecemeal effort, but as part of the total Federal legislative effort.

The Public Utilities Regulatory Policy Act, PURPA, should be repealed, but it should be repealed as part of a broader policy effort. The Federal role should be to enforce the concept that markets and not governments should determine our Nation's fuel choices. PUHCA must be reformed to reflect today's market structure and to allow tomorrow's more competitive model to more fully develop. Rural utility service policies must also be changed to allow rural electric cooperatives to successfully transition to competitive markets.

However, removing barriers may not be enough. Congress may also consider ways to enhance the development of competitive electric markets. An important part of allowing the market forces is that we need to make sure that consumers will make choices with which you or I as a policymaker might disagree. I urge you to resist the temptation to impose your own views of fuel choice on the marketplace by mandating fuel choices or allowing prior law to advantage one fuel choice over another.

We need to also make sure that the Federal Government does not work on issues like stranded costs in terms of mandating. We believe in Oklahoma we are better positioned to take care of those issues, and we would like the flexibility to manage those changes in our marketplace.

I guess my time is up, so let me just allow others to move on.

Mr. BARTON. If you are going to say something good about the comprehensive bill, we will give you another minute or 2.

Ms. BODE. Well, I do think that a comprehensive bill is important.

I guess the final thing I would say is that I think we have all learned a lot as regulators the way in which the deregulation and transition from monopoly to competition in the telephone industry has occurred. I just urge us all to sit and look at what has happened in terms of the way that transition has occurred and make sure that we use those lessons to make sure as we restructure the

electric industry that it is done in a more structured, less piecemeal effort and so that education of consumers is paramount.

[The prepared statement of Denise A. Bode follows:]

PREPARED STATEMENT OF DENISE A. BODE, OKLAHOMA CORPORATION COMMISSION

Mr. Chairman, I am Denise Bode, a member of the Oklahoma Corporation Commission (OCC). The OCC is a three-member panel elected statewide that regulates public utilities, oil and gas production and exploration, and transportation in the state of Oklahoma. I am here at the request of the Committee to discuss Oklahoma's progress towards electric industry restructuring.

Before I discuss our initiative on electricity, I want to mention that Oklahoma has promulgated new rules to restructure the natural gas industry to bring competition and choice to consumers. We are in the unbundling process now with competitive bidding starting this year. This is important because in looking to restructure the electricity industry to better America's future, we must begin to look outside of "the box" and consider energy as a whole. I know Chairman Bliley's keen interest in this issue, and I want to offer to keep the committee and staff updated on our initiative in this area as well.

Let me share with you a bit of background. Oklahoma is the third largest gas producing state in the nation, yet we only use 30% of what we produce, so we are perfectly positioned with an abundant feedstock to fuel new higher efficiency gas fired electric generation facilities. It is also important to understand that Oklahoma already has one of the lowest costs for electricity in the country. Currently, electricity prices in Oklahoma are approximately 19% below the national average, and are more than 50% lower than such states as California and Pennsylvania. When prices charged by electric providers are among the lowest in the nation, the issues driving restructuring are different from those found in states where prices are much higher. Thus, there is a particular need to move ahead cautiously to ensure we don't end up worse off after all is said and done. It is vital, however that low cost states such as Oklahoma not stand on the sideline while electric restructuring is debated.

More than three years ago, the Oklahoma legislature created the Joint Electric Utility Task Force to examine electricity restructuring issues. This Task force revealed a multitude of issues that would require legislative and regulatory review before restructuring can become a reality.

On April 25, 1997, the Electricity Restructuring Act of 1997 was signed into law in Oklahoma. As amended, the new law gives the OCC a clear mandate to move quickly over the next four years to develop an appropriate regulatory framework to allow for competition in the electricity industry. The law directs the Joint Electric Utility Task Force, with the assistance of the Oklahoma Corporation Commission, to study and propose both regulatory and statutory changes to the legislature on how to best restructure the electricity industry.

This Act recognizes that it will take some time to unwind the over 60 years of public policy that have resulted in our current electricity industry. The act provides the means for the legislature to receive the data and proposals needed to ensure electric restructuring occurs in Oklahoma in a timely manner while safeguarding the current economic advantages we enjoy. For example, electric rates for all consumer classes may not rise above the level in place on the date of enactment of the Bill until direct access by retail consumers is in place, July 1, 2002. The magnitude of this legislation's impact on Oklahoma's economic future cannot be understated both from the standpoint of attracting business to our state, because we are a reliable supplier of low cost energy, as well as from the standpoint of being one of the largest suppliers of natural gas for electricity generation inside and outside our state. The changes that will flow from the Oklahoma legislation, as well as any legislation at the federal level, will materially affect every Oklahoman's future in the next century.

The new Oklahoma law mandates that the Joint Utility Task Force, with the assistance of the OCC and the Oklahoma Tax Commission, undertake research in five separate areas. Based upon the results of the research the Joint Electric Utility Task Force will prepare a report to the legislature with recommendations for restructuring in Oklahoma. Six working groups, with participation from all parties, have been created to pursue research on the over 100 issues thus far identified. These groups are: operations; market structure; territorial and competitive; regulatory; legal; and revenue and taxation.

The first area of research, the creation of an independent system operator (ISO), is the cornerstone for restructuring. Each subsequent area of research builds on that ISO cornerstone. Technical issues research will provide the regulatory and legisla-

tive recommendations that will address system reliability, unbundling of generation, transmission and distribution, and market power. Financial issues research will focus on issues such as stranded investment, access fees and utility financing. Consumer issues research will address such vital consumer protection issues as distribution service territories, the obligation to connect and licensing of retail electric energy suppliers.

In Oklahoma, taxation may be the most difficult aspect of deregulation to resolve. The issue of tax equity will be studied and solutions developed to make sure that Oklahoma's state, county and local government needs are continually met and that the Oklahoma electric customer is not inappropriately taxed for electric energy use. It is important to know that under the Act, customer choice will not occur until tax parity is achieved.

When restructuring is completed in Oklahoma on or before July 1, 2002, the necessary regulatory and legislative solutions will be in place to ensure that rural electric cooperatives, investor-owned utilities, entrepreneurs, and all of our citizens will benefit from these efforts.

I fully support the concept of restructuring of the electric industry to provide competition and customer choice. I believe we must have a reasonable transformation of our electric industry from one of monopoly regulation to one of competition. Restructuring the electricity industry will be valuable to all consumers in the long run, if it is allowed to occur properly.

So, what is the role for federal legislation in this process? The Federal Government should focus its' efforts on those issues and policies beyond the grasp of states' authority. Of paramount concern ought to be the establishment of clear and consistent regional transmission policies. Congress should also remove existing barriers to restructuring in current law, not by piecemeal but as part of the total federal legislative effort. The Public Utilities Regulatory Policies Act (PURPA) should be repealed. The federal role should be to enforce the concept that markets, and not governments, should determine our nation's fuel choices. The Public Utility Holding Company Act (PUHCA) must be reformed to reflect today's market structure and to allow tomorrow's more competitive model to more fully develop. Rural Utilities Service (RUS) policies must be changed to allow rural electric cooperatives to successfully transition to competitive markets. Rural electric cooperatives must not be burdened with government mandated all-requirements contracts in a fully competitive generation market. Federal tax policies establishing "private use restrictions" for tax exempt bond proceeds should be amended to reflect the realities of emerging competitive markets for municipal electric services.

However, removing barriers may not be enough. Congress must also consider ways to enhance the development of competitive electric markets. An important part of allowing in market forces is that often times consumers will make choices with which you or I as a policy maker might disagree. I urge you to resist the temptation to impose your own views of fuel choice on the market place either by mandating certain fuel choices or by allowing prior law to advantage one fuel choice over another. I would also ask that you allow the states to manage the issues that we are so well suited and staffed to manage as we wrestle with opening up our markets to competition. A cookie cutter approach by the federal government does not work on issues like stranded costs. As I mentioned in the beginning, Oklahoma is a low cost state and needs the flexibility to manage these changes in our marketplace. What may be a reasonable, prudent and necessary expense in California may not be the same in Oklahoma. I urge you not to become bogged down in the quagmire of stranded costs. Those kind of fact-specific decisions can best be made on the state level.

In Oklahoma, as well as elsewhere in the country, competition in the electric marketplace is coming. Many in the electric industry are well ahead of government in moving that process along, as should be the case. The key is managing the restructuring in a steady and careful fashion. We should learn from the restructuring of the telephone industry and not surprise consumers, but get their input and spend time educating them about what choice in electricity will mean for them, or no reform will work. And by addressing expeditiously those issues that are uniquely federal in nature, Congress will go a long way towards enhancing the development of competitive electric markets. I would like to commend the chairman for the effort he and his staff have expended to hold this hearing and for asking for input from the states. Working together as a team, I know that state and federal policy makers can do the job of boosting the American economy by bringing greater choice and lower electric costs to all Americans.

Mr. BARTON. Thank you.

We now recognize Mr. Andelman. Again, your statement is in the record in its entirety, and try to summarize in 7 minutes.

STATEMENT OF RICHARD ANDELMAN

Mr. ANDELMAN. I am Richard Andelman, energy systems and utilities manager of BJ's Wholesale Club. Thank you, Chairman Barton, and the rest of the committee for the opportunity to speak to you today.

I would like to address two important issues related to the restructuring of the electric utility industry, namely the issues of stranded costs and green power. BJ's is a member of the International Mass Retail Association, an association whose members are characterized by high sales volume, extremely low profit margins, and a commitment to providing the best possible value to its customers. BJ's is a membership-based wholesale club chain which currently has 96 locations, most of which are 108,000 square feet with a few locations with the smaller 68,000-square-foot size. BJ's operates in 13 States primarily along the east coast, and this year we will spend about $27 million on utilities. Since utilities are the third largest controllable cost for BJ's, the issue of electric restructuring is extremely important to our company and our 4.5 million members.

In some of the States which have restructured thus far, namely Massachusetts, Rhode Island, and Pennsylvania, we have seen greatly increased levels of customer service and attention from the local utilities, innovative new products, the persistence of demand-side management programs in the northeastern States, and the beginnings of a competitive marketplace. However, we are particularly concerned about the distribution of so-called stranded costs to utilities which has been prevalent thus far in restructuring settlements.

Stranded costs refer to past investments made by utilities that must be written off because these assets are obsolete; that is, they cannot generate electricity at competitive prices. It is important to remember that competition for generation supply, brought about by restructuring, did not bring about the obsolescence of older generation facilities. Rather, it is advances in new technologies of higher operating efficiencies, such as combined-cycle natural gas generators, that have made the older equipment obsolete. The question is not whether restructuring should be a basis for subsidizing utilities' past investments, but whether utilities under a regulated monopoly system should be reimbursed due to technological advances.

Three Supreme Court cases provide clear support for denial of stranded costs in these case. Charles River Bridge, Market Street Railway, and Duquesne Light. The decision in Charles River Bridge makes it clear that the Court believes mandated recovery for obsolete assets would significantly and unfairly hinder technological and economic progress. In your documentation are copies of the executive summary of a study commissioned by IMRA that goes into more detail about these cases.

Another subtler attempt by the utilities to use stranded costs recovery to restrict technological progress is the concept of exit fees and other penalties to commercial customers for using onsite generation. These fees are often inescapable as they are attached to

the transmission and distribution charges on the tariffs. Fearful of losing revenue, the utilities are placing extreme fees on customers who wish to complement the existing grid-based supply by generating some electricity on their own.

However, the advantages of onsite generation far outweigh the fears for three main reasons. First, the many forms of onsite generation under consideration, such as microturbines, are a much cleaner and more environmentally friendly source of electricity production. Second, onsite generation provides the opportunity to peak-shave, reducing peak electrical demand during highest periods, such as on the hot summer days when the electrical system is straining for resources and brownouts are more prevalent. Last, using onsite generation to complement the electrical grid allows for real-time pricing mechanisms to become effective, helping customers to manage costs and helping the utilities by providing more consistent demand on the electrical grid.

My last thought on the subject of stranded costs pertains to the ever-elusive regulatory compact that utilities point to for verification that stranded costs were prudently incurred. It is my sincere wish that such a document existed, for if it did, all parties involved would know and understand how the restructuring of the electric utilities industry affects them, and this discussion would be moot. However, such a clear document does not exist. A prudent businessperson realizes there are inherent risks in large capital investments. Utilities would have been wise to adopt the terms and conditions of retiring obsolete assets before making significant capital expenditures on behalf of their shareholders.

I would now like to turn my attention to the issue of green power and discuss our participation in green power projects. BJ's is involved with a solar energy project in cooperation with the not-for-profit group SunPower Electric, and green energy marketers such as Green Mountain Energy and AllEnergy. Stated simply, the relationship is such that SunPower owns and installs the solar equipment; BJ's donates its roof space as the location for the solar-electric generating plant and helps with the engineering and installation; and Green Mountain, AllEnergy, or other green marketers buy the green power to mix into their portfolios and sell to environmentally conscious consumers. We currently have two solar installations, one being the largest in Pennsylvania, and we will soon have a third which will be the largest in Rhode Island.

BJ's is also working through the final details of procuring green power for a store in Pennsylvania and considering other green power options for the rest of our Pennsylvania locations.

The solar projects would never have happened without the restructuring of the electric utility industry in Massachusetts, Pennsylvania and Rhode Island. SunPower, Green Mountain, and AllEnergy are risking their resources because they believe there is a strong market for green power and believe in the concept of sustainable energy production as part of the healthier future for the United States.

It has been interesting to work through the different issues related to green power as both a consumer and in cooperation with producers. For instance, one Pennsylvania utility who feared the presence of onsite generation tried to impose an uneconomic auxil-

iary tariff on BJ's for having the solar installation on the roof, whereas they should have economically rewarded us for helping reduce peak demand on hot, sunny days.

We have also struggled with how to present the concept of green power to consumers and the press, as most others don't understand how the electricity grid works and are confused by the concept of green electricity mixing with brown electricity throughout the grid.

It is also equally clear that BJ's would not purchase green power if it comes at a premium. We are only able to purchase the green power at our Pennsylvania location because it was at a price cheaper than the existing utility tariff and coincided with the work that we were trying to do with the solar projects.

I believe that while many residential consumers will see the value of green power to the health and sustainability of the United States, the majority of businesses will not choose green power unless it is provided at a price equal to or below the existing utility rates. Most will not choose green power at all unless it becomes the very cheapest form of electricity production.

There is concern in the environmental community that, should restructuring take place, people will opt for the lowest-price power available, which means turning to environmentally unfriendly coal and oil plants. Should these older inefficient plants continue to be subsidized by stranded cost recovery and not be penalized for their contributions to environmental degradation, I would share their concern. However, if truly appropriate pollution penalties are applied, and market forces are free to operate, I believe the cheapest forms of electricity will also be the cleanest, and their use will satisfy both environmentalists and businesses alike.

I have run out of time. Thank you.

Mr. BARTON. We are giving each witness a little extra time even. Even though I am not sure I appreciate totally everything that you are telling me, I will give you the time to tell it if you want to take another minute.

Mr. ANDELMAN. I will summarize with a few recommendations. From the perspective of the mass retailer, let me offer these comments. First, to pass Federal legislation which restructures all States in the Nation such that utilities competing to provide electricity supply throughout the Nation must also allow competition in their own territory as well, but all people should have the freedom to choose their electric supplier; second, to deny so-called stranded costs as they impede technological and environmental progress; and third, to ensure that hidden stranded costs, such as exit fees, are not allowed. The shortsightedness of these policies discourage clean energy production, real-time pricing, and cooperative efforts to maintain consistent demands on the electrical grid. On-site generation reduces the need for peak-capacity power plants allowing all utilities to be more economical and operate more efficiently.

Thank you, Mr. Chairman.

[The prepared statement of Richard Andelman follows:]

PREPARED STATEMENT OF RICHARD ANDELMAN, ENERGY SYSTEMS & UTILITIES MANAGER, BJ'S WHOLESALE CLUB, INC.

Introduction

I am Richard Andelman, Energy Systems & Utilities Manager of BJ's Wholesale Club, Inc. ("BJ's"). Thank you, Chairman Barton, and the rest of the Committee for the opportunity to speak to you today. I would like to address two important issues related to the restructuring of the electric utility industry, namely the issues of "Stranded Costs" and "Green Power".

BJ's is a member of the International Mass Retail Association (IMRA), an association whose members are characterized by high sales volumes, extremely low profit margins, and a commitment to providing the best possible value for consumers. BJ's is a membership-based wholesale club chain, which currently has 96 locations, most of which are 108,000 ft^2 with a few locations at the smaller 68,000 ft^2 size. BJ's operates in thirteen states, primarily along the East Coast, and will spend approximately $27M on utilities this year.

Since utilities are the third-largest controllable cost for BJ's, the issue of electric restructuring is extremely important to our company and the effect it will have on our 4.5 million Members. In some of the states which have restructured thus far, namely Massachusetts, Rhode Island, and Pennsylvania, we have seen greatly increased levels of customer service and attention from the local utilities, innovative new products, the persistence of demand-side management programs in the Northeastern states, and the beginnings of a competitive marketplace. However, we are particularly concerned about the distribution of so-called "stranded costs" to utilities, which has been prevalent thus far in restructuring settlements.

Stranded Costs

Stranded costs refer to past investments made by utilities that must be written off because these assets are obsolete—that is, they cannot generate electricity at competitive prices. It is important to remember that competition for generation supply, brought about by restructuring, did not bring about the obsolescence of older generation facilities. Rather, it is the advances in new technologies with higher operating efficiencies, such as combined-cycle natural gas generators, that have made the older equipment obsolete. The question is not whether restructuring should be a basis for subsidizing utilities' past investments, but whether utilities under a regulated monopoly system should be reimbursed due to technological advances.

Three Supreme Court cases provide clear support for the denial of "stranded costs": Charles River Bridge (1837), Market Street Railway (1945), and Duquesne Light (1989). The decision in the Charles River Bridge case makes it clear that the Court believes mandated recovery for obsolete assets would significantly and unfairly hinder technological and economic progress. In your documentation are copies of the executive summary of a study commissioned by IMRA that goes into more detail about these cases and the problems associated with stranded cost recovery.[1]

Some utilities are spending tremendous amounts of money fighting for as much subsidization as possible, money which is eventually repaid by consumers and businesses. In contrast, utility shareholders have been responsible for very little of the transition to competitive generation supply; in fact, most utility stocks are doing even better than they had been previously, as investors are excited by the opportunities presented by huge amounts of incoming cash flow.

Another subtler attempt by the utilities to use stranded costs to restrict technological progress is the concept of "exit fees" and other penalties to commercial customers for using on-site generation sources. These fees are often inescapable as they are attached to the transmission and distribution charges of the tariffs. Fearful of losing revenue, the utilities are placing extreme fees on customers who wish to complement existing grid-based supply by generating electricity on their own. However, the advantages of on-site generation far outweigh the fears for three main reasons:

1. Many forms of on-site generation under consideration, such as microturbines, are a much cleaner, more environmentally friendly source of electricity production.
2. On-site generation provides the opportunity to "peak-shave', reducing peak electrical demand during high use periods, such as on hot summer days when the electrical system is strained for resources and brownouts are more prevalent.

[1] For more information, see Brough and Maloney's *Promise for the Future, Penalties from the Past: The Nature and Causes of Stranded Costs in the Electric Industry*, a study commissioned by the International Mass Retail Association and Citizens for a Sound Economy. Contact IMRA (703)841-2300.

3. Using on-site generation to complement the electrical grid allows for real-time pricing mechanisms to become effective, helping customers to manage costs and helping utilities by providing a more consistent demand on the electrical grid.

Rather than punishing commercial customers who seek to improve reliability and help stabilize electrical demands, utilities should provide incentives for such complementary behavior.

My last thought on the subject of "stranded costs" pertains to the ever-elusive "regulatory compact" that utilities point to for verification that stranded costs were prudently incurred. It is my sincere wish that such a document existed, for if it did, all parties involved would know and understand how the restructuring of the electric industry affects them, and this discussion would be moot. However, such a clear document does not exist. A prudent businessperson realizes there are inherent risks in large capital investments—utilities would have been wise to document the terms and conditions of retiring obsolete assets *before* making significant capital expenditures on behalf of their shareholders. As with any business, there are risks to any profit-making venture, and utilities and their shareholders must now absorb the costs of their risks.

Green Power

I would now like to turn my attention to the issue of green power, and discuss our participation in green power projects. BJ's is involved with a solar energy project in cooperation with the not-for-profit group SunPower Electric, and green energy marketers such as Green Mountain Energy Resources and AllEnergy. Stated simply, the relationship is such that SunPower owns and installs the solar equipment, BJ's donates its roof space as a location for the solar-electric generating plant and helps with the engineering and installation, and Green Mountain, AllEnergy, or other green marketers buy the green power to mix into their product portfolios and sell to environmentally conscious consumers. We currently have two solar installations, one being the largest in Pennsylvania, and will soon have a third which will be the largest in Rhode Island. BJ's is also working through the final details of procuring green power for our store in Conshohocken, Pennsylvania and is looking at green power options for the rest of our Pennsylvania locations.

The solar projects would never have happened without the restructuring of the electric utility industry in Massachusetts, Pennsylvania, and Rhode Island. SunPower, Green Mountain, and AllEnergy are risking their resources because they believe there is a strong market for green power, and believe in the concept of sustainable energy production as part of a healthier future for the United States. I doubt that they are expecting stranded cost recovery should the political or economic landscape change.

It has been interesting to work through the different issues related to green power, as both a consumer and in cooperation with producers. For instance, one Pennsylvania utility who feared the presence of on-site generation tried to impose an uneconomic auxiliary tariff for having the solar installation on our roof, whereas they should have economically rewarded us for helping to reduce peak electrical demand during hot, sunny days. We have also struggled with how to present the concept of green power to consumers and the press, as most do not understand how the electricity grid works, and are confused by the concept of green electricity mixing with "brown" electricity throughout the grid.

It is also equally clear that BJ's would not purchase green power if it comes at a premium. We were only able to purchase the green power at our Conshohocken location because it was at a price cheaper than the existing utility tariff, and coincided with the work we are trying to do with the solar projects. I believe that while many residential consumers will see the value of green power to the health and sustainability of the United States, the majority of businesses will not choose green power until it is provided at a price equal to or below existing utility rates. Most will not choose green power unless it becomes the very cheapest form of power production.

There is concern in the environmental community that, should restructuring take place, people will opt for the lowest price power available, which means turning to environmentally unfriendly coal and oil plants. Should these older, inefficient plants continue to be subsidized by stranded cost recovery, and not be penalized for their contribution to environmental degradation, I share their concern. However, if truly appropriate pollution penalties are applied, and market forces are free to operate, I believe the cheapest forms of electricity will also be the cleanest, and their use will satisfy both environmentalists and businesses alike.

Recommendations

From the perspective of a mass retailer, I would like to offer the following recommendations:

1. To pass Federal legislation which restructures all states in the nation, such that utilities competing to provide electricity supply throughout the nation must allow competition in their own territory as well. People should have the freedom to choose their electric supplier.
2. To deny so-called "stranded costs", as they impede technological and environmental progress.
3. To ensure that hidden "stranded costs", such as "exit fees", are not allowed; the short-sightedness of these policies discourage clean energy production, real-time pricing, and cooperative efforts to maintain consistent demands on the electrical grid. On-site generation reduces the need for peak capacity power plants, allowing all utilities to become more economical and operate more efficiently.
4. To penalize polluting power plants or credit non-polluting ones, encouraging a more level playing field where market forces can support sustainable forms of energy production. If it is reasonably economic to do so, I believe it is in the national interest to promote technologies that reduce global warming, acid rain, and the numerous other negative effects traditionally associated with electric power production.
5. To recognize that, although many residential consumers will likely choose green power products, most industrial and commercial customers will not, until the price of green power drops to a threshold consistent with their internal purchasing policies.

Mr. BARTON. Thank you.

Mr. Ain, we would like to hear your statement now.

STATEMENT OF ROSS AIN

Mr. AIN. Good morning, Mr. Chairman, and members of the subcommittee. My name is Ross Ain, and I am president of East Coast Power. East Coast Power, formerly Cogen Technologies, is developing new merchant power plants and operates more than 1,000 megawatts of gas-fired, combined-cycle power plants that serve three utilities and multiple industrial steam users including the largest East Coast refinery.

I might add that my personal history includes the honor of serving as counsel to this distinguished committee from 1976 to 1979.

Mr. BARTON. Those were the glory years. Glad you are back.

Mr. AIN. I am also here today representing the Electric Power Supply Association. In my written testimony I comment on the issues of utility stranded costs and the environment. With the few minutes that I have now, I would like to focus on PURPA.

Quite simply, PURPA is the instrument that brought competition to an industry that was dominated historically by a vertically integrated monopoly structure. Today because of PURPA, a significant sector of the industry, the independent private power producers, must meet market standards for performance rather than regulatory prudence reviews and almost automatic pass-through of costs incurred.

Costs plus investment recovery has given way to performance-based criteria driving enhanced efficiency, reliability, and technological innovation in this industry. In the decade before PURPA, the average electricity plant actually decreased in efficiency. When PURPA was being considered, the average efficiency of electricity-generating plants used in the United States was around 33 percent, which meant that your conversion of BTU input to electric output was about 33 percent. Our new combined-cycle plants today,

those figures are about 60 percent, to give you a feel for the technological changes.

Since PURPA, electricity prices have declined in real terms by about 25 percent, and we look forward to even lower prices in a fully competitive marketplace. Plants now cost about half as much per kilowatt of capacity as they did 20 years ago and are 50 to 100 percent more efficient in converting BTUs into electric power.

The central element of PURPA's success was its focus on costs. The target to beat for any successful new project became the cost of power that the utility would have paid had it gone forward itself. If a competitor could beat these utility avoided costs, it was given an opportunity to succeed and perform. At the time these projects were built and longer-term contracts were signed, these projects were considered by State regulatory bodies that reviewed them as the most cost-effective addition to existing generation capacity that the utilities had on their drawing board. In fact, for our large project in New Jersey, when the New York Public Service Commission reviewed it, they determined that we were 8 percent below what the utility would have charged consumers over the life of that contract.

Obviously a review of the these projects today with 20-20 hindsight might produce a different conclusion. This is not surprising. In any industry that faces long lead times for plant construction and high capital costs per unit of output, there is a substantial risk that economic conditions will change between the time that capital is committed and the end of the plant's useful life. In the private sector, contracts are used to hedge these risks for investors and for customers. PURPA followed this market practice, and project developers and utilities relied on long-term contracts to hedge their risks on both sides and finance billions of dollars of new plant improvements.

In a real sense PURPA has been the victim of its own success. When States calculated utilities' avoided costs, no one predicted that the cost of new plants would be cut in half and that power plant efficiencies would nearly double. The legacy of PURPA, in fact, is a lesson that competitive markets and innovation will drive down costs to consumers faster and further than we can imagine.

While the long-term legacy of PURPA is competition and lower costs, the engine for this innovation has historically been the mandatory purchase requirement of section 210. For many years this requirement was the battering ram to get into the generation marketplace. This is what gave access and open monopoly markets to entrepreneurs. In its historic context the requirement has had a profound and positive effect on the industry.

Recently, however, the mandatory purchase requirement has largely been rendered moot by events occurring in the marketplace. To the extent that utilities are becoming distribution companies that deliver power for others and have no supply obligations themselves, they have no PURPA requirement to buy energy from others. Because of this, few States, if any, today guarantee new PURPA facilities rates that are higher than utilities' variable costs or fuel costs or provide any allowance for capital recovery.

For this reason the committee should realize that if the mandatory purchase requirement is repealed prospectively, there will be

no consumer savings. In fact, I don't even know of one example of a PURPA contract imposed on utilities in the last 2 years. Granted, there still continue to be PURPA contracts signed; however, these are freely negotiated deals between the developer and the utility buyer, often in response to a competitive solicitation.

Let me close with a few recommendations for the subcommittee on how to consider PURPA in restructuring legislation. First, any amendment to PURPA should acknowledge explicitly the sanctity of existing legal contracts. Parties to a legal contract should have their valid expectations and legitimate rights honored. To the extent that the contracts are honored, risks are reduced, and costs go down. The congressional action honoring contracts will reduce costs for your constituents by having a more stable investment environment. We don't need to create Third World contract risk in the United States.

Second, we encourage you to consider removing the ownership restrictions on PURPA power plants. Originally these restrictions were included to prevent self-dealing by integrated monopolies and to encourage new market entrants. As retail competition takes hold, these restrictions no longer have much relevance.

Finally, a number of members of this committee, including the subcommittee vice chairman Cliff Stearns, have endorsed provisions to guarantee the recovery by a utility of PURPA contract costs. Because these costs were created with the encouragement of a Federal program, it is appropriate for the Congress to clearly state these costs should be recovered in rates and not burden shareholders. In this regard we urge you to consider this cost recovery is contingent on the good faith of utilities in honoring the contract rights which are the very subject of that recovery.

We appreciate this opportunity to testify before the subcommittee. We look forward to working with you as you craft legislation that can create a robust competitive national market place for electricity.

Thank you, Mr. Chairman.

[The prepared statement of Ross Ain follows:]

PREPARED STATEMENT OF ROSS AIN, EAST COAST POWER LLC

Good morning, Mr. Chairman and members of the Subcommittee. My name is Ross Ain and I am the President of East Coast Power, LLC, a developer of merchant electric and steam cogeneration plants in the northeast United States. East Coast Power, formerly Cogen Technologies, Inc., operates more than 1000 Mw of gas-fired combined-cycle power plants that serve three utilities and multiple industrial steam users, including the largest east coast oil refinery. I might add that my personal history also includes the honor of having served as Counsel to this distinguished full Committee between 1976 and 1979.

I am also here today representing the Electric Power Supply Association (EPSA). EPSA is the national trade association representing competitive power suppliers—including independent power producers and power marketers—active in U.S. and global energy markets. EPSA members include many of the pioneering firms that responded to the rules made possible by PURPA and built a new breed of power plants, where payment depended on performance and binding contracts. Today, EPSA represents many of the leading power marketers and power plant developers who are committed to competitive markets.

In my testimony, I will address three important issues associated with the restructuring debate that are the focus of today's hearing—the Public Utility Regulatory Policies Act of 1978 (PURPA), stranded costs and the environment.

PURPA—THE BEGINNING OF COMPETITION

This committee is considering legislation to reform or repeal PURPA. While we support prospective reform of elements of PURPA *in a federal comprehensive bill* (as opposed to stand-alone legislation), it is important for the Committee to understand the law, its implementation and its impact.

Quite simply, PURPA has been the instrument to bring competition to an industry that has been dominated historically by vertically integrated monopolies. Because of PURPA, this industry, which was built on the premise of regulatory reviews and the near automatic pass-through of costs, is learning the discipline of the private sector. Fuel adjustment clauses are being replaced by long-term contracts for risk hedging. "Cost-plus" investments are giving way to a new and powerful emphasis on increasing efficiency, reliability and technical innovation.

Without PURPA, we would never have begun to realize the massive consumer benefits that can come from increased competition in power markets. In the decade before PURPA, the average electricity plant actually decreased in efficiency. Since PURPA, power plants of all varieties have become cleaner and dramatically more efficient. Since PURPA, every electric power provider in the country has come to realize that cost counts and that customers no longer have to be captive to vertically integrated monopoly structures. Since PURPA, electricity prices have declined in real terms by about a quarter, and we look forward to even lower prices in a fully competitive marketplace.

The Concept of Avoided Costs

The central element to PURPA's success was its focus on costs. The benchmark for any successful new project became the competitive cost for power that would otherwise be paid by ratepayers to the utility alone. If an entrant could beat the utility's expected costs, it was given a chance to succeed. At the time these projects were built and any long-term contracts signed, these projects were considered by the state regulatory bodies that reviewed them as cost-effective additions to existing generation capacity.

Below are some statistics[1] that compare the price paid under PURPA contracts to the average system cost and the cost of alternative power supplies in several regions at the time these commitments were made. Needless to say, PURPA projects look very good in this historic context.

Electricity Costs:

Niagara Mohawk vs. IPPs, 1988 to 1994 (average power costs).	
IPPs	6.0 cents per Kwh
NiMo Oswego Station	7.95 cents per Kwh
NiMo Nine Mile 1	10.39 cents per Kwh
NiMo Nine Mile 2	14.10 cents per Kwh
Houston Lighting & Power vs. IPPs, 1990	
IPPs	4.7 cents per Kwh
HL&P average	6.4 cents per Kwh
HL&P South TX Project	12.67 cents per Kwh
Central Maine Power Co. vs. IPPs, 1993 costs	
IPPs	8.91 cents per Kwh
CMP utility units	9.44 cents per Kwh
CMP utility units & canceled plants	17.77 cents per Kwh

Obviously, a review of these projects today might produce a different comparison and conclusion. This is not surprising. In any industry that faces long lead times for plant construction and high capital costs, there is a substantial risk that economic conditions will change between the time capital is committed and the end of the plant's anticipated lifetime. In the private sector, contracts are used to hedge these risks for investors. PURPA created no exception to this rule, and project developers relied on long-term contracts to finance billions of dollars for new plant investments.

In a real sense, PURPA has been a victim of its own success. When states calculated the utility's "avoided costs," who would have predicted that the costs of a new plant could be cut in half, and that power plant efficiencies could nearly double? The legacy of PURPA, in fact, is the lesson that competitive markets and innovation will drive down costs to consumers faster and further than we can probably imagine. While, at some point, there will be limits to how low prices can go, it seems safe to say that we're not there yet. This should provide some comfort to this Committee as it considers bringing full competition to power markets.

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[1] Source: National Independent Energy Producers, 6/1/95

As in other industries, suppliers of goods and services to customers must respond to market conditions. Even holders of long-term contracts are not blind to opportunities for negotiated cost reductions and customer benefits. In many states, we have seen the voluntary renegotiation of existing contracts to the benefit of all parties. Additionally, in most states where competitive restructuring has occurred, the issues associated with these contracts have been addressed explicitly and adequately. We expect these trends to continue.

Section 210 and the Mandatory Purchase Requirement

While the long-term legacy of PURPA is competition and lower costs, the engine for this innovation has been historically the mandatory purchase requirement within Section 210. For many years, this requirement was the legal foundation for entrants in the marketplace. This is what gave access and opened monopoly markets to entrepreneurs. Without this provision, it is safe to say that PURPA would have had a greatly diminished effect. Without the purchase requirement, we probably would not be having this hearing today, you would not be considering competitive restructuring and 22 states would not have already moved forward to provide electricity consumers a choice in their power provider.

In its historic context, this requirement has had a profound and positive impact on the industry. Recently, however, the mandatory purchase requirement has largely been rendered moot by events unfolding in the industry. To the extent that utilities are becoming distribution companies that deliver power for others, this issue becomes less and less relevant. If a generator is able to contract with customers for power sales, either directly or through a marketer, a mandatory purchase contract with a distribution utility becomes unnecessary.

Today, few states, if any, guarantee new PURPA facilities payment rates that are higher than the utility's fuel costs, or provide an allowance for capital expenses. These rates do not drive new investment, but only allow power plants that have excess supply to sell under rates and conditions that may benefit all parties.

The Committee should realize that, if the mandatory purchase requirement is repealed prospectively, there will be no great customer savings because this aspect of the law is no longer a focus of industry activity. In fact, we know of not even a single example of a significant high-cost PURPA contract "mandated" on utilities in the last two years. Granted, there continue to be PURPA contracts signed. However, these are freely negotiated deals between a developer and a utility buyer, often in response to a competitive Request for Proposal (RFP).

Legislative Recommendations on PURPA

PURPA is often at the center of any federal debate on how best to restructure the electric power industry. Below are some recommendations on how we believe the Committee should consider PURPA the context of a comprehensive a restructuring bill:

First, any amendment of PURPA should acknowledge explicitly the sanctity of existing legal contracts. Parties to a legal contract should have their valid expectations and legitimate rights honored. Just as if you were dealing with water rights or contracts for land or natural resources, Congress needs to minimize the possibility that its actions will have an adverse impact on the private sector and our tradition of markets and contracts.

Second, we encourage you to consider allowing the unrestricted ownership of PURPA power plants. Originally, these ownership restrictions were included to prevent self-dealing by integrated monopolies and to encourage market entrants. As retail competition takes hold, these restrictions make less and less sense. Market power is being dealt with in a number of ways, including the divestiture of assets and regulatory oversight. Ownership restrictions on a few assets do little to prevent abuses. In a competitive market place, these provisions mainly serve to complicate the purchase and sale of existing facilities.

Third, a number of members of this Committee, including Subcommittee Vice Chairman Cliff Stearns, have endorsed provisions to guarantee the recovery by utilities of PURPA contract costs. Since there is a clear federal nexus here—PURPA—it is appropriate and helpful for the Congress to state clearly that these costs should be recovered in rates and not burden shareholders. However, we urge you to ensure that this cost recovery is contingent on the good faith of the utilities and the actual honoring of contracts. We have seen examples where a utility is allowed the full recovery of costs despite the fact that it is attempting to breech a legitimate PURPA contract.

STRANDED COSTS—HONORING PAST COMMITMENTS

For many years, utilities had a legal obligation to satisfy the full electricity load in their service territories. To do so, they had to incur significant costs. They had to buy land, build generating units, enter into power purchase agreements with other owners of generating plants and hire staff to plan, operate and monitor these units. Because these investments were designed to last many years, often as long as 40 years, regulators required the utilities to recover the related costs gradually during the lifetime of the investment. Consequently, at any point in time, a utility will have recovered some, but not all, of its investment in these items.

When competition is introduced, regulators no longer set electricity prices; the competitive market does. Because generating plants coming into the market today tend to be less costly than those planned long ago, it is possible that, in some regions, market prices will be lower than the price a regulator would have established to ensure that the utility can continue to recover the costs of the obligations undertaken when it was a monopoly. This risk of under-recovery is often referred to as the "stranded-costs" problem.

A successful transition to fully competitive electricity markets requires that stranded-cost issues be addressed and resolved at the earliest possible date. We believe a successful transition to a competitive electric industry should include the recovery of all legitimate, verifiable and prudently incurred stranded costs, including regulatory commitments and contractual obligations. Honoring existing commitments and agreements is central to the successful transition, in part because a restructured electric market will be increasingly dependent on the strength of contracts for power purchase, fuel supply, construction, financing and energy services. Yesterday's contracts must be honored if tomorrow's are to have the necessary credence to allow a competitive market to mature.

Utilities should have a reasonable opportunity to recover all of their costs if they meet the following criteria:

- *Legitimate:* The utility must have incurred the costs for legitimate purposes in carrying out its public service responsibilities. Costs associated with expansion into foreign markets, failed non-utility ventures, or golden parachutes should not be recoverable. In addition, costs that were not recovered because a customer departed to build a PURPA-qualifying facility might not be legitimate, if self-generation by customers was the type of risk historically born by the utility.
- *Verifiable:* The utility must be able to prove that it actually incurred the costs in the past and will not be able to recover them through vigorous action in future competitive markets. A vague argument that "market pressures will keep prices down" does not make a stranded-costs claim verifiable. The utility must provide real evidence of future market prices.
- *Prudently incurred:* A utility should recover only those costs that represent PUC-approved least-cost service. Just as a competitive market imposes cost accountability on participants, so must a stranded-investment policy. Otherwise, the utility, when competition begins, would be able to use government-assisted cost recovery to amass cash flow exceeding that of its competitors, while operating less efficiently.
- *Non-mitigable:* As a condition of stranded-investment recovery, the utility must take all possible actions to reduce its stranded costs. For example, if the stranded costs include surplus land or plant, the utility must try to find buyers willing to pay a fair price.
- *"Net" stranded costs:* The recoverable stranded costs should be net stranded costs. The term "net stranded costs" covers the possibility that, in some regions or for some utility assets, the market value might exceed book value.

Some utilities argue that their estimates of future revenues under market competition will fall short of their book costs by large amounts. Disputes about utilities' claims are, in part, disputes about the proper technique for determining stranded costs. These techniques fall into two main categories: administrative estimates and market-based assessments.

Administrative estimates require analysts to project future market prices, based on fuel costs, capital costs, costs of environmental compliance and site remediation, as well as less tangible factors, such as changes in technology. Projection of future market prices proved to be an extremely difficult task during the administratively determined avoided-cost proceedings that implemented PURPA. These projections are inherently uncertain, giving rise to a need for "true-up" mechanisms at a later date.

Market-based realizations, either through sales, spin-offs or appraisals, minimize regulatory guess work. They determine the market-value by using the market. The generation that is the source of the stranded-investment claim is auctioned at mar-

ket to the highest bidder. That bid price establishes the market value for purposes of stranded investment recovery. In making its bid, the purchaser is the one who must analyze and assume the risk of future price changes. It is important to note that experience shows that the marketplace often values generating assets more highly than an administrative review would indicate. In fact, recent generating asset auctions have netted, on average, 1.9 times the book value of the assets. *We strongly urge lawmakers and regulators to require market-based valuations for stranded-cost recovery calculations.*

ENVIRONMENTAL ISSUES—MARKET DRIVEN SOLUTIONS

Driven by market forces at the wholesale level, the competitive power supply industry has brought significant environmental and efficiency improvements to the power-generation sector during the past 20 years. With the right market structure, full retail competition can bring even greater environmental and energy-efficiency benefits.

The Committee needs to realize fully that legislation that drives fully competitive power markets is *pro-environmental* legislation. While there are many environmental issues that might be added to a comprehensive restructuring bill, *it is critical that these provisions not delay the development of competitive markets.*

In general, environmental policies, if designed to reflect and enhance competitive forces, will produce improved environmental quality at the lowest cost. Environmental policies should complement—rather than compromise—the environmental benefits of competition. These policies should be market-based, incentive-driven, equitable to all participants and available to market entrants. Such policies should provide clear price signals for the value of the environmental benefits of newer, cleaner sources of power.

Environmental policies should neither skew the competitive marketplace nor determine the success of market participants. In order for competitive markets to realize their full potential, they must provide an open, level playing field where all firms—including market entrants—can compete. Firms should not gain a competitive advantage simply because their plants' age or ownership characteristics allow them to escape certain regulatory requirements.

In the long run, competition will favor cleaner and more efficient facilities. Competition will accelerate the turnover and upgrading of existing power plants, many of which are 30 or more years old. The Subcommittee should take note that, in the last week, two EPSA members have announced programs at a cost of hundreds of millions of dollars to clean up older utility power plants which were acquired in divestiture sales. This trend will continue. Additionally, given a chance, most consumers will demand clean power. Competition makes environmental quality a marketing necessity to the successful developer and seller of electricity.

CONCLUSION

Members of the Subcommittee, I have appreciated the opportunity to appear before you today and address these very important issues. Congress needs to move without delay to implement full and fair competition in the electric power industry. PURPA got us started down the road to competition and should be dealt with appropriately as we move forward. Failing to resolve stranded-cost issues or adopting policies that ignore, abrogate or force the renegotiation of contracts could mean an unnecessary and costly delay in the movement towards competition. As for environmental policies, they should complement, not obstruct, the rapid transformation of the electric power industry into a fully competitive marketplace. Thank you.

Mr. BARTON. Thank you, Mr. Ain.

We would now like to hear from Mr. Adelberg.

STATEMENT OF ARTHUR W. ADELBERG

Mr. ADELBERG. Thank you very much, Mr. Chairman, members of the committee. I am Arthur Adelberg, executive vice president of CMP Group, Inc., which is the parent company of Maine's principal electric utility company, Central Maine Power Company, as well as gas companies and telecommunications companies and other ventures.

I am here today to speak on behalf of the PURPA reform group of which I am cochair as well as the Alliance for Competitive Elec-

tricity and the Edison Electric Institute, of which my company is a member. I am pleased to have this opportunity to offer remarks on both the issues of PURPA and stranded costs.

Let me begin with PURPA. I think it is safe to say that while Mr. Ain, the previous speaker, and I may disagree over the benefits or harms that PURPA may have created over its life, we seem to be in full agreement that the time is now here both to repeal prospectively the mandatory purchase requirement as a requirement that has no place in a competitive market and to ensure cost recovery for the costs incurred by utilities under the PURPA contracts.

Dealing briefly first with the mandatory purchase requirement, it is important for this committee to understand that many utilities such as mine, but many others as well, in compliance with State restructuring requirements have gone out of the business of furnishing energy to their customers. What do I mean by that? What I mean is we are becoming pure delivery or distribution companies. We own no generating resources. We have no obligation to supply the energy that goes over our wires to our customers, and indeed our customers have no obligation to buy energy from us.

In that context a requirement that we buy energy from a PURPA-qualifying facility, from a PURPA project, simply makes no sense. We have no use for that energy. All we can do with it, if we are required to buy it, is to resell it typically at a loss in the marketplace. So it is a requirement that is clearly out of date, and it is time, it is overdue to remove that requirement from the books. It can only be a source of mischief.

Turning to the question of cost recovery, as Mr. Ain just pointed out, cost recovery to the utilities who have entered into these contractual obligations is crucial. Now, you heard the previous speaker make the point that we should defer acting on PURPA reform until we have comprehensive legislation, the implication being that there is really no harm in waiting for this to occur. I would disagree, and I would disagree very strenuously with that position for this reason. The failure of the government, of Congress, which imposed the requirement to sign these contracts in the first place, to articulate and enunciate clearly in the law that these costs will be recovered has had very definite identifiable credit impacts on the utilities who are burdened by these costs.

My company is a good example. We had a higher percentage of PURPA contract power in our energy mix than any other utility in the United States. At its peak that amounted to about 40 percent of our costs. Our stranded costs associated with above market costs associated with those contracts at their peak approached 3 to 4 times the entire equity that we had in our company.

When the credit review agencies, who determine the cost that we pay to borrow funds to maintain our system, look at a company such as mine and see the questions about our ability to recover these costs over the full life of these contracts, which can extend another 20 years, that raises concerns with them, and they reflect those concerns by downgrading our debt. For many, many years as the rating agencies looked at the quality of our company they cited our burden of these contracts and the questions about recovering these costs as a reason to maintain other debt at below-investment grade levels, which in turn raised our costs of attracting and sus-

taining, having the capital available to investment in maintaining a reliable system.

So this is not an academic exercise. This is not an area where we can simply turn a blind eye and wait for another however long it takes, years, to get comprehensive legislation. Having the absence of a Federal provision such as reflected in H.R. 1138, the Stearns bill, the absence of such a provision is causing harm to consumers today. It needs to be addressed, and it can be addressed. The Stearns bill has tremendous bipartisan support, and I would urge the committee to examine the possibility of moving forward with legislation as quickly as possible to address that need.

Let me turn to the issue of stranded costs and emphasize a few points. First of all, it is critical to recognize that what we look at as stranded costs and what is complained about as the burden of allowing utilities to recover costs, these are costs that are typically end rates today so that recovering these costs, affording utilities the ability to recover these costs, is not a matter of raising rates, it is a matter of retaining rates at the levels that they are, and these rate will decline as these costs are amortized and paid down.

Many of these costs are generation costs, but as you can see from this chart, many of the costs are associated with social programs such as reflected in regulatory assets. For example, my company has a substantial volume of costs associated with State-ordered conservation programs. Those are part of our stranded cost burden. We need to recover those costs.

Another significant category of costs which is directly traceable to Federal policies is decommissioning costs, the cost of decommissioning nuclear plants. Those costs tend to run in the hundreds of millions of dollars for each plant. Again, the Congress has, through the Nuclear Regulatory Commission, enforced this regulation over these plants. It enforces regulation that requires the funding and proper handling of decommissioning these plants. That is a very responsible thing which is done, and it is very important for society that this funding be available, but by the same token there is no provision in the law today which says to the utilities that they will have the mechanism to recover those costs in rates.

Again, so long as this is so, this becomes a burden on the utility. It becomes an uncertainty which is reflected in the utility's borrowing costs, and that in turn becomes a penalty to the consuming public.

It has been suggested here this morning that utilities should have thought about these issues when they made these investments, that they should have made provisions to ensure that they would have the ability to recover the investments when the investments were made. The fact of the matter is as has been recognized by the Supreme Court since the 1940's and was reaffirmed in the Duquesne case, utilities invested under a system where the benefits and burdens of investments were all placed on the consumer and not on the utility, and consumers have benefited tremendously from that system. We had, for example, a nuclear plant that operated in Maine for 25 years. It saved customers over a billion dollars compared to what power would have cost in a competitive marketplace. The investors in that plant did not get one cent of that billion dollars. It all went to the consumers.

So that was the system under which we were regulated. Concomitant with giving the consumer benefit or our good investments was the consumers were to take the risk of the investments, which in hindsight turned out to be uneconomic. That is what is known as the regulatory bargain.

In the Duquesne case the Court said perhaps regulators could choose a different method of regulating, but if they choose a system such as allowing prudent investments to be recovered, they can't switch back and forth and then say, we would like a different system which is a heads-I-win-and-tails-you-lose proposition for the investor.

So there is a requirement, a constitutional requirement, a fairness requirement and a matter of efficiency in allowing stranded costs to be recovered. I believe there is a very distinct Federal role for ensuring particularly those costs that are traceable to Federal policies are made recoverable. Thank you.

[The prepared statement of Arthur W. Adelberg follows:]

PREPARED STATEMENT OF ARTHUR W. ADELBERG, EXECUTIVE VICE PRESIDENT, CMP GROUP, INC.

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, I am Arthur W. Adelberg, Executive Vice President of CMP Group, Inc., parent of Central Maine Power Company. I also serve as Co-Chair of the PURPA Reform Group, an association of utilities from across the country dedicated to the elimination of PURPA as a barrier to restructuring electric markets. Central Maine Power also is a member of the Alliance for Competitive Electricity and the Edison Electric Institute. My comments are consistent with the positions these organizations have taken on the issues of PURPA reform and utility cost recovery. Thank you for allowing me the opportunity to appear before you today to discuss the two separate and distinct issues that are the subject of this panel: reform of PURPA, including assurance of PURPA cost recovery; and secondly, the responsibility Congress and the states have to address recovery of prudently incurred utility costs that might become non-recoverable as we transition to competitive electricity markets.

Quite honestly, when the PURPA Reform Group was formed back in 1995, we believed that the case for repeal of the mandatory purchase obligation and recovery of federally-compelled PURPA costs was so strong that this would be a short-lived coalition.

My presence before you today shows how wrong we were, *not* about PURPA, but about the ability to gain passage of *any* legislation in this area, no matter how modest and consensus-backed certain provisions might be.

We commend you, Mr. Chairman, and wish you well in your efforts to formulate a broader bill to promote competition in electricity markets. We strongly encourage you to include the Stearns bill, H.R. 1138, now with 19 Democratic and Republican co-sponsors, as the PURPA component of any comprehensive legislation you develop. Mr. Burr's comprehensive electric restructuring bill (H.R. 667) contains nearly identical PURPA reform language, as did last year's Paxon-Largent draft restructuring bill. Similar legislation has been introduced again in the Senate this year by Senators Mack and Graham (S. 282). There is widespread agreement that PURPA needs to be reformed and we believe that a legislative consensus exists on how to do it, including assurance that the costs associated with this ill-fated federal mandate be recovered. The sooner Congress eliminates this federal barrier to more competitive electric markets, the better it will be for consumers and those who seek to supply them.

With respect to stranded costs, utilities should be given a fair opportunity to recover fully their prudently incurred costs. While this is not yet a consensus position, as I believe PURPA reform and recovery of PURPA mandated costs is, experience shows that the fair recovery of these costs actually expedites successful restructuring. The FERC adopted this position in Order No. 888 with respect to recovery of FERC jurisdictional *wholesale* costs and virtually all of the 20 states that have acted to open their markets to retail competition have given utilities a reasonable opportunity to recover fully their prudently incurred, non-mitigable retail costs that

otherwise may not be recoverable in a competitive market. The one state that hasn't, New Hampshire, has found itself embroiled in protracted litigation, while its neighbors have moved forward.

Rather than an impediment to restructuring, as some have contended, the fair recovery of stranded costs actually facilitates expeditious and successful restructuring.

I. PURPA: THE $42 BILLION LEGACY

Central Maine Power Company is Maine's principal electric utility, serving over half a million customers, and representing 80 percent of the state's population. Central Maine Power also has the dubious distinction of having the largest share of its energy resource mix made up of PURPA generation of any electric utility in the United States.

In 1997, Maine enacted legislation restructuring its electric industry. In response to that legislation, which we supported, we recently divested all of our non-nuclear generation and will provide all of our customers with their choice of electricity supplier beginning March 1, 2000. We look forward to participating in a market which rewards efficiency, good business judgment and marketing skills. We believe that our customers and the economy of our state will benefit from a more market-oriented approach.

We have found in Maine, however, that favoring customer choice and greater competition in the electric industry is the easy part. Resolving the dozens of complex subsidiary issues, including how one deals with the legacy of past government policies which have been at variance with the market, is far more challenging. None has proved to be more difficult than dealing with the legacy of the Public Utility Regulatory Policies Act of 1978, more commonly known by it acronym, "PURPA."

Congress enacted PURPA as one of the original components of the Carter Administration's Energy Plan to alleviate the perceived oil and natural gas shortages of the late 1970's. The intent of PURPA was to encourage conservation and promote the development of renewable fuels. It did this by establishing a special class of power generators, known as qualifying facilities ("QFs"), and it required utilities to buy all the electricity that these qualifying facilities wished to sell. In general, a QF must be of a certain size, burn certain renewable or waste fuels, or produce steam for commercial or industrial use as well as electricity.

Congress sought, in drafting PURPA, to ensure that consumers would pay no more for PURPA power than they would have to pay for other power. It did this by providing in PURPA that the maximum price for electricity from QFs would be the cost that the purchasing utility would incur if it generated the electricity itself or purchased it from a source other than the QF. Thus, Congress assumed that the cost of QF power would generally be at or below the cost of the utility's self-generated power, or of other power available for purchase by the utility. Unfortunately, this has not proven to be the case.

FERC's regulations implementing PURPA give QF project developers an option to "lock in" at the time the purchase contract is signed the price that the QF will receive over the life of the project. This can only be done by using predictions about what the price of power will be ten, twenty or even thirty years in the future. These predictions have proven to be no more accurate than the PRG's 1995 legislative predictions or the $125 a barrel oil price projections emanating from DOE in the late 1970s. In addition, purchasing utilities were largely denied the ability to include renegotiation and other clauses typically included in long-term contracts to help manage market risks. As a result, most QF power is now significantly more expensive than the market price at which power can be purchased. The PRG filed a petition at FERC to repeal the lock-in rule in the Spring of 1995, but the Commission has never acted on it.

According to a study by the Utility Data Institute ("UDI"), a division of The McGraw-Hill Companies, PURPA is costing electricity consumers nearly $8 billion a year in excess power costs.[1] The UDI study found further that PURPA, not nuclear powerplant construction or fuel use restrictions, is the *single largest factor* in explaining the regional disparity in electricity prices. High prices and large numbers of PURPA projects go hand in hand. By contrast, you won't find many PURPA projects in low-cost states.

Resource Data International ("RDI") released a study in 1997 which places the net present value cost of above market non-utility generator obligations at $42 billion.[2]

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[1] Utility Data Institute, Measuring the Competition: Operating Cost Profiles for U.S. Investor-Owned Utilities 1995 (1996).

[2] The RDI study also found that while non-utility generation constituted only about seven percent of all electricity delivered to the grid in 1996, it represents nearly 30% of utility above mar-

In California and many Northeastern States, including Maine, PURPA is the largest single category of above market costs which are likely to become non-recoverable in a market where utilities are required to provide competitors access to their wires. Similarly, a number of utilities would have no above market costs, but for PURPA costs.

The State of Maine and the customers and shareholders of Central Maine Power Company have suffered inordinately as a consequence of PURPA. Central Maine Power has been required to purchase as much as 40 percent of its power needs from QF projects at an average cost of 9 cents per kwh. This cost is some 200% to 300% higher than what we could purchase this power for in the wholesale market today. According to the 1997 RDI report, Central Maine Power faced above market costs of over $1 billion, more than twice the entire equity of our shareholders. Nearly all of these above market costs can be traced directly to PURPA.

Importantly, for purposes of today's hearing, PURPA's goal of protecting the environment has also backfired in Maine. The only coal used in electric generation in our state is burned by a PURPA generator. And the high cost of electricity resulting from our PURPA generators has driven many of our customers to substitute dirtier fuels, such as diesel oil and wood, for electricity in their homes and businesses.

A. PURPA Is Impeding The Transition To a More Competitive Electricity Market

PURPA's mandatory purchase requirement was premised on the key assumption that utilities would continue to be the exclusive suppliers of electricity to all consumers within their service territories, thus assuring retail buyers for the electricity generated by the QFs. Clearly, the authors of PURPA did not envision a restructured electric industry where exclusive franchise territories no longer exist. Without exclusive franchise territories, the costs associated with high-cost PURPA power will not be recoverable. Yet, utilities and state regulators are powerless to alter QF power purchase contracts, unless the QF voluntarily agrees to do so.

Many utilities in restructuring States have decided to divest their generation assets. Central Maine Power has already sold its generation and has decided that it will not be in the power marketing business once retail choice begins. Thus, we will become essentially a "wires" company with no generation of our own, and no need for power to market to our existing customers. Many other utilities are following a similar path. However, utilities continue to be obligated to purchase over-priced PURPA power under contracts that extend well into the future. Even worse, utilities remain legally obligated to enter into new PURPA contracts. This and unresolved questions about how utilities will ensure payment of these PURPA obligations, which continue well past the year 2010, are greatly complicating utility restructuring efforts.

B. Congress Should Repeal PURPA Promptly and Provide for Recovery of PURPA Costs

As this subcommittee knows well, there are a number of complex issues involved in restructuring the $200 billion U.S. electric industry. PURPA, however, is not one of them. PURPA reform is really quite simple. Continuation of PURPA's special privileges for one particular class of electricity generators is inconsistent with today's competitive electricity marketplace. There is no justification for continuing a requirement that utilities sign long term contracts to buy energy from PURPA projects, when those utilities are facing competition in wholesale markets and are, or soon will be, facing competition in selling energy to their retail customers. PURPA is costing consumers billions of dollars in excess electricity costs and it is contributing to the over-market cost problem. Congress should repeal the mandatory purchase provisions of PURPA now.

Congress also should ensure that utilities are able to recover the costs associated with PURPA obligations, the majority of which will continue well into the next century.[3] Utilities had no choice but to enter into these contracts and never have been permitted to earn a rate of return on them, unlike other utility investments. It is only fair, then, for Congress to ensure that these costs are recovered since the original decision to impose them rests with the Congress. If recovery of these costs is not addressed legislatively, it would be tantamount to Congress leaving the scene of an accident that it created.

In addition to being the "fair" thing to do, we believe that as a legal matter, utilities are entitled to recovery of PURPA contract costs. Section 210 of PURPA re-

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ket costs. The average price of NUG power was more than 70% higher than the cost of generation by utilities. Resource Data International, Power Markets in the U.S. (1997).

[3] According to Resource Data International, over 70% of PURPA contracts will not expire until after the year 2010. Resource Data International, Power Markets in the U.S. (1997).

quires utilities to purchase electricity at wholesale from certain electric generators. Section 210(b) requires that the prices paid to these generators be "just and reasonable to the electric consumers of the electric utility and in the public interest." The Federal Energy Regulatory Commission ("FERC") has determined that prices meet this "just and reasonable" standard if they equal a utility's avoided costs. Indeed, FERC has *required* that utilities pay PURPA generators a price equal to this avoided cost rate.

Under the Federal Power Act, the FERC has exclusive jurisdiction over wholesale sales of electricity. PURPA does not change this. Under the Supremacy Clause of the Constitution, states are required to follow the final decisions of a federal agency that has jurisdiction over a matter. *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986); *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354 (1988). In addition, PURPA itself, has been interpreted by the courts to preclude state "utility type regulation" of PURPA contracts that would deny the pass-through of contract costs. *Freehold Cogeneration Assocs. v. Bd. of Regulatory Comm'rs of N.J.*, 44 F. 3d 1178 (3rd Cir. 1995).

Despite what we believe is a strong legal position favoring recovery, future litigation over this question is possible should recovery not be allowed. In the meantime, continuing uncertainty about the government's commitment to ensure full recovery of these costs is damaging utilities' credit ratings, and forcing them to incur substantially higher costs of borrowing. This translates to higher electric rates.

C. PURPA Has Been of Little Benefit to Renewables

One of the most enduring fallacies associated with PURPA is that PURPA is needed to encourage electricity generation from renewable sources of energy. Although this was one of the stated purposes of PURPA, it has done little with respect to that objective. As of December 31, 1997, wind turbines, solar and geothermal units together comprised only 4.7 percent of all installed non-utility generation capacity.[4] Because of their intermittent nature, these facilities generated only 3.3% of all non-utility power generated in 1997. Biomass and waste comprised another 21 percent of installed non-utility capacity. Natural gas, coal and oil made up over two-thirds of installed non-utility generating capacity.[5] Thus, non-renewable sources of energy have been the primary beneficiaries of the PURPA mandatory purchase requirement, not renewables.

II. RECOVERY OF UTILITY COSTS "STRANDED" BY END OF UTILITY SALES FRANCHISE

Whether utilities should be given a reasonable opportunity to recover fully their prudently incurred costs is one issue in the restructuring debate that has generated more heat and less light than almost any other. Although FERC and the states' regulators, for the most part, have dealt responsibly with recovery of utility investments made and approved under the previous regulatory regime, there is an important role for Congress to play here, particularly since Congress has enacted federal energy policies that led to many now uneconomic utility investments.

"Stranded costs" are those costs which have been prudently incurred by utilities to meet what was then understood to be a service obligation to customers, but which cannot be recovered in a market in which the government compels utilities to provide competitors access to their wires. Stranded costs include the costs of uneconomic federal and state mandates; "regulatory assets," such as deferred taxes and demand side management obligations; generation, the cost of which may exceed future market prices; and other costs, such as nuclear decommissioning costs, which are required by the federal government but which may not be reflected fully in rates.

Stranded costs are, to a significant degree, attributable to ever changing state and federal mandates and policies. These mandates and policies largely determined what fuels utilities were allowed to use and the social obligations they were required to undertake to meet their primary regulatory obligation—the obligation to serve. It would be unlawful and inequitable to address the demand for competitive choices without acknowledging the extent to which prior government policies contributed to the current problem.

Over the past twenty years, utilities have been told in federal legislation what fuels they could or could not use, who they had to buy power from, and at what prices. Similarly, utilities have been used as stealth tax collectors and as surrogates for funding programs that, in other times, would have been supported by taxes, not electric rates. These programs include conservation, research and development, and

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[4] Edison Electric Institute, Capacity and Generation: Non-Utility Sources of Energy at 57 (1998 ed.).

[5] *Id.*

special discounts for low-income customers and favored customer segments. The federal and state proponents of these programs assumed that utility customers were captive and that the utility would eventually be made whole while these public policy goals were met "off budget."

The examples below demonstrate how utility investment decisions have been skewed by U.S. energy policy:

- *Natural Gas Wellhead Price Controls and Curtailment Policies*—Prior to the 1970's, many utilities, particularly those in the South and Southwest, were using significant amounts of natural gas to generate power. In the late 1960's, however, shortages of natural gas began to appear. These shortages were the consequence of the federal wellhead natural gas price controls. As a result of these government-created shortages of natural gas, the Federal Power Commission (predecessor agency of the FERC) required interstate pipelines to curtail delivery of natural gas to electric utility boilers so that gas would be available for higher priority residential and small commercial users. By the 1970's, curtailment plans substantially limited utilities' ability to use natural gas to generate electricity. In the Winter of 1973, severe cold weather and chronic natural gas shortages led to massive curtailments of natural gas shipments to electric powerplants. It was not until five years later that Congress was finally able to pass legislation gradually phasing-out these destructive natural gas wellhead price controls.
- *Energy Supply and Environmental Coordination Act of 1974 (ESECA)*—In 1974, in response to growing natural gas shortages and the Arab Oil Embargo, Congress passed ESECA, which prohibited any powerplant from burning natural gas or petroleum products as its primary fuel source. If possible, it also required the conversion of existing powerplants to coal.
- *The Fuel Use Act*—Building on ESECA, in 1978, Congress passed the Powerplant and Industrial Fuel Use Act of 1978 ("The Fuel Use Act"). The Fuel Use Act prohibited utilities from using oil and natural gas to generate electricity and required utilities to replace oil and gas units with alternative fuel sources. In response to the Fuel Use Act, utilities were forced to shut down perfectly functioning and efficient oil and gas units. Utilities were required to consider new fuels for base load generation consisting almost exclusively of coal and nuclear energy. Many of the coal units that were built were subject to costly air pollution control requirements mandated by the Clean Air Act. Additionally, in some parts of the country, the number of coal units which could be built was limited by air quality and coal transportation concerns.
- *Public Utility Regulatory Policies Act of 1978 (PURPA)*—PURPA's primary goals were to encourage efficiency and the use of alternative sources of fuel for generation of electricity. To achieve this goal, PURPA required utilities to purchase power from non-utility generators at a rate that reflected the utilities "avoided cost" of having to build its own generation facilities or purchase power from another source. At the option of the project developer, prices could be locked-in for the duration of the contract, often 25-30 years. When many of these contracts were signed, future energy prices were estimated to be much higher than what they are today. As noted above, PURPA alone is responsible for an estimated $42 billion in utility above market costs.
- *The Energy Policy Act of 1992 (EPAct)*—EPAct gave FERC the authority to order wholesale transmission access and opened up the generation market to virtually all firms. By allowing utilities and other power generators to "wheel" power across utilities' transmission facilities, EPAct dramatically increased competition, which, in turn, has resulted in state efforts to expand competition to retail markets.

A. Components of Utility Above Market Costs

There is a great misconception regarding the makeup and origin of utility above market costs. The 1997 RDI study found that total above-market utility costs nationally are about $202 billion. While the largest share of these costs is related to generation ($86 billion), power purchase contracts from other utilities ($54 billion), regulatory assets, including deferred taxes and demand side management programs ($49 billion), and PURPA costs ($42 billion) make up over half of utility above market costs.[6] I do not consider PURPA costs as "stranded costs" because of their unique legal status. They nonetheless are a significant component of utility above market costs, and they undermine the argument that utility above market costs are associated with "bad management decisions," unless it was a bad management deci-

[6] Resource Data International, Inc., Press Release announcing *Power Markets in the U.S.* study (February 7, 1997).

sion to comply with a federal law. I also submit that paying one's taxes and complying with state-mandated conservation programs is something that management should be encouraged to do. Moreover, state PUCs have disallowed billions of dollars of imprudently incurred utility costs over the past twenty years. What costs utilities currently have in rates have been determined to be prudently incurred costs.

The RDI study also found that stranded costs are not just an investor-owned utility problem. Investor-owned utilities account for $147 billion, government-owned utilities $33 billion, and rural cooperatives $22 billion of utility above market costs.

B. Reasons Why Congress Should Provide Reasonable Opportunity for Utilities to Recover Previously Approved Costs

There are five major reasons why Congress and the states should provide a reasonable opportunity for utilities to recover fully their stranded costs.

First, stranded costs are not new costs. They have been previously approved by regulators and are already reflected in existing utility rates. Allowing recovery of prudently incurred stranded costs will not result in rate increases.

Second, recovery of all costs, other than PURPA contracts and nuclear decommissioning costs, can occur over a reasonably short transition period. This is not a long-term issue, but it is one that must be responsibly addressed for a smooth transition to a fully competitive electricity market.

Third, denying utilities recovery of prudently-incurred costs will only delay competition by encouraging litigation and adversarial regulatory proceedings. A case in point is the State of New Hampshire, which originally was scheduled to have retail customer choice by January 1, 1998.

Fourth, there are strong Constitutional and legal arguments for this position, which have been widely recognized. The Supreme Court held in *Loretto v. Teleprompter CATV Corp.,* 458 U.S. 419 (1982), that the right to exclude others is one of the most essential property rights. If the government compels utilities to surrender this right, and open their wires to competitors, the government must be prepared to pay fair value, not only for the wires, but for the damage to the associated generation investment. At least since *FPC v. Hope Natural Gas Co.,* 320 U.S. 591 (1944), it has been clear that a taking occurs if regulatory authorities interfere with the utility's opportunity to earn a fair return on prudently incurred investment to carry out regulatory obligations.[7] As noted by the Supreme Court in *Duquesne Light Co. v. Barasch,* 488 U.S. 299, 309 (1989):

> Under the prudent investment rule, the utility is compensated for all prudent investments at their actual cost when made (their "historical" cost), irrespective of whether individual investments are deemed necessary or beneficial in hindsight. The utilities incur fewer risks, but are limited to a standard rate of return on the actual amount of money reasonably invested.

Fifth, as the Electric Power Supply Association has pointed out, there are very practical reasons why utilities should be given a reasonable opportunity to fully recovery their stranded costs:

> [B]ecause these purchases fulfilled a public service obligation, it is reasonable for the utilities to recover the costs. To deny the utilities an opportunity to recover the costs would signal that contracts entered into reasonably, and often under a legal mandate, can be ignored. Abrogation of contracts will create a serious disincentive to newcomers considering whether to enter competitive markets which will be built extensively upon contracts.
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> Today's contracts must be honored to ensure that tomorrow's contracts can provide the confidence needed for a robust market.[8]

The argument has been made that no one reimburses manufacturing or other firms that are forced to write off facilities made obsolete when they lose customers. Therefore, utilities should be treated no differently. This argument ignores, however, the special history of the electric utility industry in this country. As was explained in the *Economic Report of the President,* transmitted to the Congress in February 1996:

> In unregulated markets the possibility of stranded costs typically does not raise an issue for public policy—it is simply one of the risks of doing business. However, there is an important difference between regulated and unregulated mar-

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[7] *See* J. Gregory Sidak and Daniel F. Spulber, *Deregulatory Takings and the Regulatory Contract* at 115 (1997).

[8] Electric Power Supply Association, Retail Electric Competition: Getting it Right, at 23-24, 35-36 (January, 1999).

> kets. Unregulated firms bear the risk of stranded costs but are entitled to high profits if things go unexpectedly well. In contrast, utilities have been limited to regulated rates, intended to yield no more [th]an a fair return on their investments.
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> ...[R]ecovery should be allowed for legitimate stranded costs. The equity reason for doing so is clear, but there is also a strong efficiency reason for honoring regulators' promises. Credible government is key to a successful market economy, because it is so important for encouraging long-term investments. Although policy reforms inevitably impose losses on some holders of existing assets, good policy tries to mitigate such losses for investments made based on earlier rules, for instance, by grandfathering certain investments when laws and regulations change.

PP. 187-188.

The high stakes associated with the government "keeping its promises," even to utilities, were eloquently stated by James Q. Wilson, professor of management and public policy at UCLA, in an article in the *Wall Street Journal:*

> Free economies, with all of the benefits they produce, require, at a minimum, free markets, property rights, and reliable contracts. Property and contracts express our society's commitment to equity as well as to investment. Government will infringe on property and contracts, sometimes for good reasons and sometimes for bad ones. When it does so on the basis of a promise to allow the cost of that infringement to be recovered, it has an obligation to honor that promise. A healthy economy and a healthy society require that the government keep its word—even to utilities.[9]

C. The Role of Congress in Providing for Recovery of Utility Costs

The States have an important role to play in ensuring recovery of retail stranded costs. I believe, however, that the Congress has a particular obligation to address those costs over which the states do not have primary jurisdiction, or that arise as a consequence of overriding federal policies or decisions. Two examples illustrate why Congress should provide for stranded cost recovery: (1) nuclear powerplant decommissioning cost recovery, where the federal government has an overriding interest in ensuring that adequate funds are being collected in order to safely decommission nuclear powerplants at the end of their useful lives; and (2) *wholesale* costs stranded as a consequence of EPAct and FERC's open access policies, or state open access policies, where the states do not have adequate jurisdiction to address recovery. Federal legislation should address the issue of stranded cost recovery in order to eliminate jurisdictional uncertainty and potentially years of litigation. While I can understand the desire of some to avoid this issue altogether, experience with other recent industry restructuring legislation should have taught us that legislative ambiguity only serves to slow the transition to competition.

Because policy makers create transition costs when they promote competition, they have the responsibility of ensuring that utilities can recover these legitimate costs. Stranded cost recovery goes hand-in-hand with restructuring—as each successful state and the FERC have shown. Congress should establish a strong stranded cost recovery standard, recognizing the primary role of the States in deciding retail stranded cost issues and of the FERC in deciding stranded cost issues where the states lack jurisdiction, or where there are overriding federal interests.

III. CONCLUSION

Reforming PURPA is not sufficient, in and of itself, to accomplish the transition to a fully competitive electric market, but PURPA must be dealt with, and soon, if we are to make a successful transition to competition. Waiting to address PURPA reform until all other market reforms are in place is counterproductive and harmful to consumers. I strongly urge this Subcommittee to start quickly down the road to eliminating this, and other federal barriers, to a fully competitive electric market. There is widespread agreement that PURPA needs to be reformed and we believe that a legislative consensus exists on how to do it. This consensus includes ensuring that utilities have the opportunity to recover the costs associated with federally-mandated PURPA contracts. The sooner Congress eliminates this federal barrier to

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[9] James Q. Wilson, "Don't Short-Circuit Utilities' Claims," *Wall Street Journal,* August 23, 1995, at A12.

more competitive electric markets, the better it will be for consumers and those who seek to supply them.

Congress also has the responsibility to address the stranded cost consequences of the electric industry restructuring that it has undertaken. While states have the primary role in addressing retail stranded costs, including the mechanism for their recovery, leaving to the states all stranded cost decisions would be an abdication of the responsibility that the federal government bears for many of the investments that may now be stranded by industry restructuring. It also would ignore the role of the federal government in the very restructuring that is placing recovery of these costs at risk. Finally, it fails to account for the jurisdictional gaps and overriding federal policy interests in recovery of certain costs. For all these reasons, for reasons of fundamental fairness and to move ahead in the transition to more competitive markets, I urge that Congress provide a reasonable opportunity for utilities to recover their prudently invested costs. Failure to address this issue will only slow the move to competitive generation markets.

Mr. BARTON. Thank you, Mr. Adelberg.

The Chair is going to recognize himself for the first 5 minutes. Before I turn the clock on, I want to hand out a chart. There is a larger version. This is the chart that is entitled "States Are Addressing Stranded Costs." So let's give all of the members a smaller copy and give our panelists a copy of this chart.

The Chair is going to recognize himself for the first 5 minutes. The argument is assuming, and I know all of the panelists don't agree, that we should address stranded costs. Mr. Andelman's testimony says he doesn't think it should be addressed. But assuming that you are on the other side of that argument, that we should address stranded costs, this chart, which has been prepared by the majority subcommittee staff based on data that is publicly available, shows the States and the latest estimates as to what the stranded costs are. The green are States that are opening their retail markets, the blue are the States that are moving toward retail markets, and the yellow are States that show no interest or are making low progress.

My question is, and I am going to address it directly to Ms. Bode, but any member of the panel can tackle it, what happens in a State that is a net consumer of electricity that does restructure or deregulate and does address stranded costs if the power is generated in a State that is not addressing deregulation and doesn't allow for stranded costs? In other words, is it possible upon a purely State-by-State basis to address stranded costs given the fact that power moves in most States across State boundaries?

That's a fairly complex question right off the bat, but I am told that you are a very smart lady. Mr. Largent speaks highly of you.

Ms. BODE. That is one of the big issues that we all have to deal with. I think that it would be extraordinarily difficult without an across-the-board addressing of electric restructuring by the Congress. It would be difficult, I think, for competition to move forward on a comprehensive basis and have electric restructuring being done.

The idea of doing comprehensive electric restructuring legislation at the Federal level allows the States, both those that want to restructure and those that don't want to restructure, more of an option. If you don't do anything at the Federal level, and it is done—restructuring is just done on a State-by-State basis, you do have extraordinarily unequal treatment. I think that is the point that you may be trying to address.

In Oklahoma we are doing electric restructuring legislation where we are not waiting for the Congress to act, but we are hoping that the Congress will act so there will not be problems in us restructuring our market and our neighboring States not restructuring their markets, because there would be tremendously unequal treatment. Our system would be open, and others would be closed. I think that would cause an unequal treatment.

So I think you must have an overarching in terms of dealing with how you deal with stranded costs on a Federal level versus allowing the States to determine how they deal with stranded costs. I think that is something that we are best able to deal with. It may require working together with other States. Right now what we are doing, for example, we just signed off on an order last week that allowed for a public service company of Oklahoma which is a subsidiary of Central and Southwest, which is going to be a new subsidiary of another bigger company basically allowing that merger to occur, and that electricity is going to be flowing nationwide in a much broader fashion. So we are having to work with all of these other States in getting that accomplished.

Mr. BARTON. As a public utility commissioner in Oklahoma, you can't mandate stranded cost recovery in Georgia, for example, which, according to this chart, shows $6.3 billion, since is it is a yellow State, according to our analysis not likely that they are going to address electricity restructuring. You can do it within your own State, but you can't tell the Georgia Public Utility Commission that they can allow stranded costs in Georgia if there is a Georgia utility that wants to transfer power to Oklahoma. Isn't that correct?

Ms. BODE. That is correct. Absolutely.

Mr. BARTON. My time has expired on the first question, it is amazing, but we are going to appear in regular order. So we are going to recognize Mr. Hall for 5 minutes.

Mr. HALL. Thank you, Mr. Chairman.

For fear that I run out of time before congratulating Ms. Bode, I want to thank her for her appearance here and for her input to this committee for several years. When you left here, it was our loss and Oklahoma's gain, but I thank you for the good help that you have been to my office and to the Texas delegation as a neighbor in Oklahoma.

Ms. BODE. We want to sell power into your markets eventually, so we are eager to have you open it up——

Mr. HALL. Competition is the name of the game. We want to deal with all of the territories.

Ms. BODE. I had that coming. I clearly had that coming.

Mr. HALL. Let me talk to Mr. Andelman, because I just don't understand your position. Maybe I will after you answer some of my questions. You stated a prudent businessperson realizes their inherent risks in large capital investments. You get around to saying, as with any business there are risks to any profit-making venture, and utilities and their shareholders must now absorb the costs of their risk.

Are you saying they shouldn't pay any stranded costs; is that what you are saying?

Mr. ANDELMAN. That would be the best position, yes.

Mr. HALL. That is the way that I read it. I have read it, gone back over it, and had it read to me.

Let me ask you. There is some obvious distinction between a regulated utility and an unregulated business; are there not? Is yours an unregulated business?

Mr. ANDELMAN. Sure.

Mr. HALL. How do you justify your statement that utilities and their shareholders must now absorb the costs of their risk? Which risk are you referring to?

Mr. ANDELMAN. Mostly the risk of the capital investments that they decided to make during construction of those plants.

I think if you look at some of the cost-based rate-making States versus the performance-based rate-making States, in other words, where the more assets that a utility had, the larger their revenue, you will see that there was a lot of pushing and trying to get more utility plants built and a lot of drive through the public utility commissions to get these capital assets on the books. I think that is inherent in a lot of the States that have cost-based rate-making, whereas those who have performance-based rate-making where they have to live up to efficiency standards and things like that, I think it is slightly less prevalent.

I think overall that if you look at the stocks of one of the utilities, you will see that they are doing quite well. If you look at some of the activity that is going on, you will see that a lot of the companies that are getting stranded cost recovery are then taking those funds, buying up other utilities, purchasing power plants overseas. It doesn't seem to be as bad as they are making out, because they are really taking other capital risks and other capital investments, and so I am concerned about that.

Mr. HALL. Let me ask you, would you deny recovery of a utility's legitimate, prudently incurred costs?

Mr. ANDELMAN. I think that depends on your definition of what is prudently incurred.

Mr. HALL. The courts will do that.

I thank you, for if we take your advice, I would leave here immediately and go back to practicing law. You are really going to make it good for all of the trial lawyers across the country. You are going to be most congenial and Mr. America and all with them. When it comes upon litigation, it is unbelievable if we would take your advice and say, well, there is not going to be any stranded cost recovery. I think they ought to be reasonable and prudent. That is a question the courts are going to decide.

We don't want the courts to have to decide that. We would like to write a bill that delineates it. As I have said before, they have had so much time to prepare their costs and get ready to submit and show that these costs were prudently—I don't think they have to be geniuses. You can look back rather than—they could look forward at that time, but I am just naive enough to want to believe that a board of directors responsible to their investors and shareholders and to the public at large and to the State or Nation that they are contracting with, that they want to be reasonable, and they want to make the best deal they could make.

I just have a hard time—Mr. Chairman, I need to go just another half a minute if I could.

If the government subjects these businesses and their shareholders to risks not undertaken at the time of capital investments were made to fulfill a franchise utility obligation's to serve, why do you object to providing for recovery of the stranded costs that result from this change in governmental policy when the government caused them to do that, and they in response tried to give a gracious living? How can you do that? How can you be that indifferent?

Mr. ANDELMAN. I would look to some of the other industries that have restructured; trucking, railroad, airlines, et cetera. Telephone.

Mr. HALL. There have been mistakes made there.

Mr. ANDELMAN. This term of stranded costs wasn't really seen at that time when those industries were restructuring. It seems as if it is a newly invented term to try and recover the costs.

I don't blame the utilities. I think they are doing the right thing by their shareholders. I think if I was them and I held a lot of stock, I would do the same thing. But you haven't seen these sort of stranded cost recoveries in the other industries that have restructured. I am not sure why all of a sudden we need to exempt the electric industry as well.

Mr. HALL. I thank for your testimony and thank you for your courtesy. I yield back the balance of my time.

Mr. WHITFIELD [presiding]. Mr. Shimkus, you are recognized for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman.

I am going to follow up with Mr. Andelman real quick and then to the rest of the panel.

Mr. Andelman, the company that you are speaking of as a wholesale club, BJ's Wholesale Clubs, so there is memberships? I am trying to get an idea——

Mr. ANDELMAN. Yes, sir.

Mr. SHIMKUS. It is kind of like in our area we have Sam's Clubs. Would that be a similar operation?

Mr. ANDELMAN. We are much better, of course.

Mr. SHIMKUS. If in Collinsville, Illinois, my home town, I had a company, Shimkus TVs, and it was American-made, and we passed Federal regulation that said, okay, now, BJ Wholesale has to sell Shimkus TVs, and you had to take the TV and sell it for a loss, would that be a position that the wholesale company would like? I mean, would you accept or the company would accept that proposition, that proposal?

Mr. ANDELMAN. Would they accept it?

Mr. SHIMKUS. Yes. Would you say, all right, we will do it?

Mr. ANDELMAN. I would think that would not be a very popular position.

Mr. SHIMKUS. Thank you.

Let me follow up on a question on stranded costs. Most of the panelists believe that stranded costs should be recovered. I want to ask the question on the PURPA stranded costs. In Illinois part of the recovery plan also has an equation for the PURPA stranded costs. Do you think that there is any role for the Federal Government to recover the PURPA stranded costs? And if we go to Ms. Bode first and just go down the table. Mr. Andelman, since you

don't agree that they should recover stranded costs, we can kind of skip over you.

Ms. BODE. The question is——

Mr. SHIMKUS. Should PURPA be handled any differently? Should there be a role by the Federal Government in recovering PURPA stranded costs other than the States?

Ms. BODE. I guess my view is that the States should be in charge of all stranded cost issues with regard to the utilities which they regulate, because I think that we have a better way of determining what was freely entered into than does any Federal agency in looking at these issues.

Mr. SHIMKUS. Thank you.

Mr. Andelman, if you want to answer that, but I don't think that you will agree that there is any stranded cost recovery should be done.

Mr. ANDELMAN. I just want to go back to your previous statement.

Mr. SHIMKUS. No. I am done with that. I have 5 minutes.

Mr. Ain.

Mr. AIN. I think that PURPA delegated to the States what was formally relegated by the Federal Government under part two of the Federal Power Act, which is sales or resale and interstate commerce. They asked the State pursuant to Federal law to create a program with Federal standards, and now they are changing the rules of the game.

It seems to me that the Congress was the one who designed this program initially, who had the FERC come up with the rules, and required the State to implement it. Therefore it seems to me that the Federal Government should assure the buyers of that power that they not be burdened by that purchase.

Mr. SHIMKUS. Mr. Adelberg.

Mr. ADELBERG. Yes. I would agree with Mr. Ain. I would just add this. Ms. Bode suggested that it was appropriate for the States to be examining the prudence of costs incurred and associated with PURPA contracts. In fact, those costs are wholesale costs by definition. They are costs of power that is being being sold for resale by the utility. The FERC has nationwide authority, Federal authority over those costs. It has been held by the Third Circuit Court of Appeals that the States cannot disobey an order of the FERC determining if those costs are just and reasonable. So I don't believe it is appropriate for the State.

And again, I would also add that while the States may handle the issue responsibly, we need to remember those costs will go out for another 20 years or more. That is a tremendous period for the utilities to be subjected to the risks of decisions when State policies will change.

Mr. SHIMKUS. Let me go back to both of you, again bringing in Illinois's equation, because Illinois already in their recovery has the PURPA stranded cost recoveries. So you are proposing that we have an additional layer when the States have already taken that into consideration?

Mr. ADELBERG. Absolutely. Again, the problem is you are looking at costs that are very large. We are talking about some $8 billion a year to date. They go on for a long period of time. It is almost——

Mr. SHIMKUS. Can I cut in? I don't mean to cut you off, but in the Illinois law there is a severability issue in which if you change one action of the Illinois law, the whole dereg law in Illinois goes out the door. In our move to competitive energy strategy with the aspect that PURPA has been considered, do you want to throw the baby out with the bath water?

Mr. AIN. I think the Federal Government should consider a standard that would allow for full and timely recovery and leave it to State interpretation as to the full and timely recovery judging against the very details of the contracts, the cost incurred by the utilities. I would hope that that would not do harm to Illinois's restructuring legislation.

Mr. SHIMKUS. Mr. Chairman, can I just ask on the same line just to see if Ms. Bode has any response?

Mr. WHITFIELD. This would be the last question. Ms. Bode, do you want to answer the question?

Ms. BODE. As stated, there have been States that have taken on issues, and I guess our interpretation as to whether FERC has exclusive jurisdiction or whether the States also have a role to play is different. I think we would exert the authority over making those decisions as part of our process that we are undergoing in Oklahoma, our electric restructuring process. We are looking at all issues across the board and not assuming that FERC has that kind of jurisdiction.

Mr. SHIMKUS. Thank you.

Thank you, Mr. Chairman.

Mr. WHITFIELD. Yes, sir.

Mr. Pallone, you are recognized for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman.

Just following up on some of the comments that have already been made, I want to ask a question of Mr. Adelberg. From a legal standpoint, do you think that States could deny compensation for stranded PURPA costs?

Mr. ADELBERG. I believe based on the Freehold case, which is cited in my testimony, that it would be illegal for a State to deny recovery of a PURPA contract cost that met the FERC standard of justice and reasonableness, which means simply that the contract price is below the utility's avoided costs. The concern that we have is that that is one court. As you have heard, there are States that don't necessarily believe that they are bound by that. I would hate to see this issue continue to be litigated over the next several years.

Mr. PALLONE. Let me ask you another question about PURPA costs, whether PURPA costs have had an effect on your company's Wall Street bond rating. In other words, is there a concern that Wall Street believes there is some risk that you will not be able to recover these costs?

Mr. ADELBERG. The answer to that question is yes. It is quite explicit. You need only go review the rating reports, the published rating reports by the rating agencies, Duff & Phelps, Standard & Poor's, and Moody's, over the past several years. They talk specifically about the burden of these costs, the length that we will continue to bear them, and the uncertainties associated with having those contracts in place. So it was an explicit consideration that the

rating agencies used in downgrading our debt, and that raised our costs for our consumers.

Mr. PALLONE. I wanted to ask Mr. Ain if you believe that—well, I guess two parts. First, do you believe that PURPA has stimulated renewable energy development; and then second, if PURPA is repealed, do we need something like a renewable energy portfolio to ensure that it continues?

Mr. AIN. I think two things that the Congress did, two at least, that greatly stimulated renewable energy development, certainly having the market for the power was a critical element in the 1980's. But second, the Congress had passed a series of tax incentives in the form of tax credits and 5-year depreciation. That was extremely valuable. I worked on large solar projects, wind projects, geotherm projects, hydro projects, and they all benefited.

What really destimulated, if you will, the renewable energy projects was when you put out a renewable project, you are basically building it and capitalizing 30 years of gas reserves on day one. And if the future forecasts it, the forward price curve of natural gas is very low, you can't finance a renewable project against that forward price curve because you don't think that you will have a market. So either you have to lower the capital costs of that project through tax incentives, or you have to raise the market price that you can get for your output. It is very simple. So those are the two things.

I think that I agree with some of the things that the gentlemen have stated. I think Mr. Markey stated we have made terrific progress on the efficiency and reliability of renewable industry technologies. But frankly, the forward price curve of natural gas and coal and alternate fuels is so low that it makes it very difficult to invest in a 30-year capitalization when you talk about a renewable energy project.

Will the renewable portfolio approach be the answer? It would certainly force people to buy at some price from renewable energy projects. It would be a way, if you will, of creating a market for that power and raising the price because people would be having to buy it. I think that Congress should look at that and look at alternatives like tax incentives, which have worked well in the past. It is a capital problem.

Mr. PALLONE. Now, your response makes me ask another question, if I dare, but I see Mr. Dingell is not here. So maybe I can ask this question, since Mr. Dingell is not here. If he were here, I might not want to ask this, but since he is not, I will ask it. Does that mean that Ways and Means needs to be a part of this electricity restructuring bill?

Mr. AIN. I was merely addressing the incentive necessary to commercialize available renewable energy projects. And the Congress as a whole has alternatives. You can certainly try to fill that gap and do what you can here, and other committees and other agencies have other mechanisms under their jurisdiction.

Mr. PALLONE. That was a nice way to get around that question.

Let me ask—this is something—oh, my time is up. I am sorry. Thank you, Mr. Chairman.

Mr. WHITFIELD. I gave everyone else one additional question.

Mr. PALLONE. This is one that comes up all the time, but I will ask Ms. Bode this. It is the question of whether you think that PURPA should be repealed by itself or whether it should be part of a comprehensive package.

Ms. BODE. I think it should be a part of a comprehensive package, to answer your question directly. But responding to what you said previously, I do believe PURPA has played an important role in terms of allowing people to see what a competitive marketplace could look like. It allowed people to move forward and see what these merchant power plants could look like. I think it gave people a taste of what competition could be.

I think now as we are looking at comprehensive restructuring of the electric industry, I think it is appropriate to eliminate that one provision that sort of gave us a little leap forward and look more comprehensively on allowing competition across the board.

I wanted to respond to the other part of it because I think it is important in answering your question to kind of see where we have been and look at where we are going forward. I think PURPA alone being repealed versus as part of a more comprehensive package, it is a matter of timing, but I think it would be better done as part of a more comprehensive package addressing all competition.

Mr. PALLONE. Thank you.

Thank you, Mr. Chairman.

Mr. WHITFIELD. Mr. Pickering, you are recognized for 5 minutes.

Mr. PICKERING. Thank you, Mr. Chairman.

I would just like to clarify some of the questions that come to my mind on the jurisdiction, who should be responsible for stranded costs. As I understand it, Ms. Bode recommends that the States should have total jurisdiction over stranded costs, both PURPA and other State-related issues; while Mr. Adelberg and Mr. Ain, you would recommend, at least on the PURPA portion of stranded costs, which represents about 30 percent of stranded costs, that FERC would have that jurisdiction. Is that a correct understanding of your positions?

Mr. ADELBERG. In my case, what is important is that the Federal Government, the Congress, pass legislation that assures the recovery. The administration could be done in various ways. But I believe it is a Federal issue because they are federally mandated wholesale costs. I also, by the way, would, as I mentioned——

Mr. PICKERING. You would say if we did Federal legislation, as long as we said the States shall be responsible for both stranded costs and the cost of State regulatory action as well as PURPA, any Federal action, as long as the State administered it, would you still be supportive of that?

Mr. ADELBERG. You have to proceed with a certain amount of finesse here. When PURPA was enacted, there was some legislation that went to the Supreme Court that raised that very question of where was the proper dividing line between Federal Government policy and what the Federal Government could require States to do. The Supreme Court found in a 5 to 4 decision that PURPA did not violate the 10th amendment. There is some question as to whether the Court would go that way today. So I think the prudent thing to do is to impose it at the Federal level, require that it be

FERC standards that ensure the recovery, and then the States would be bound by those FERC standards.

Mr. PICKERING. But if you gave the States the jurisdictional authority and the administrative authority with consultation with the FERC and due deference to FERC recommendations?

Mr. ADELBERG. Again, if it was drafted carefully, it might survive constitutional scrutiny.

Mr. PICKERING. Mr. Ain, your view?

Mr. AIN. It is certainly in the national interest that there be financially viable transmission and distribution companies in the United States that can serve the public. Anything this Congress does should not injure that financial viability. The question comes to the nature of the stranded cost recovery.

Mr. PICKERING. Mr. Ain, if I could just get to the jurisdictional issue, because that is the core of our question here. Would you support—would you say that the FERC should administer all of the stranded costs related to PURPA, or, if we could, keep it at the State?

Mr. AIN. I think it should, and I think it is administerable, and it is clear, and you could tell what costs are incurred and what you could pass through.

With regard to stranded costs with regard to power plants, it is not a science, it is really an art form. It is a very difficult evaluation process. I think certainly the States have a role, since they were the ones in many cases who authorized these plants to be built, who did the prudence reviews, not the FERC.

I think, going back to the national interest, you want to make sure that you don't have an industry that can't carry out a vital public function.

Mr. PICKERING. Mr. Ain, I am not sure if I understand your answer. Did you say that the State could handle both PURPA and all other stranded costs?

Mr. AIN. No. I said there should be a Federal standard that mandates that PURPA-incurred costs, since they are easily verifiable, should be passed through to the customers of the utilities incurring those costs.

Mr. PICKERING. But can the States do that?

Mr. AIN. The States are doing that. The States will be the ones actually doing that. The question is are they doing that under a Federal requirement.

Mr. PICKERING. So we could require the States to do it without having the FERC actually do it?

Mr. AIN. That is correct.

Mr. PICKERING. Thank you very much.

Mr. WHITFIELD. Thank you, Mr. Pickering.

Mr. Wynn, you are recognized for 5 minutes.

Mr. WYNN. Thank you, Mr. Chairman.

Mr. Adelberg, is it your position that stranded costs beyond PURPA should also be handled at the Federal level?

Mr. ADELBERG. I think the answer is certainly for certain categories of stranded costs, the answer is yes.

Mr. WYNN. What categories would that be?

Mr. ADELBERG. Well, the most clear case would the nuclear decommissioning costs that are associated with a Federal regulatory

system. I believe that it is appropriate for Congress to address those costs.

Mr. WYNN. What about costs other than those that were incurred, as Mr. Ain indicated, as a result of a State process?

Mr. ADELBERG. I believe that the issue has to turn on the Federal Government's role both in causing the costs to be stranded in the first place. In other words, if Congress imposes a date certain and says by a certain date everyone will have a retail choice, then I believe Congress's responsibility to provide for standard cost recovery is greater. That is the first point.

The second is you need to look again as the particular costs in questions. There is sort of a widespread myth that the Federal Government had no role in the generation fuel decisions made by utilities over the past 25 or 30 years, but, in fact, if you look at the record, Congress was very active in the 1960's, 1970's, and 1980's in setting policy that affected utilities' decisions as to what fuels were burned in power plants.

Mr. WYNN. But essentially the State regime, regulatory regimes, made the ultimate decisions with respect to non-PURPA and non-decommissioning decisions.

Let me direct this question to both you and Mr. Ain. Would it be your position that even where States have calculated and negotiated stranded costs, that this ought to be redone under a Federal system? My State of Maryland, for example, has essentially negotiated this issue and taken into consideration PURPA costs, and I think the argument I presume some of my colleagues would make is why should we redo this, and why is the Federal Government better at doing this than the States who have already done this?

Mr. ADELBERG. My State has also done it.

I would not advocate a Federal standard that would undo the work that is done because I think a State like mine and yours that have done it properly would find that there would be no further action required.

What is of concern to us is that 5 years down the road, that there is a Federal standard in place that discourages the State from reopening the question under some political pressure or pressure from some consumer groups to lower electric rates.

Mr. WYNN. Mr. Ain.

Mr. AIN. I would tend to agree with that answer.

Mr. WYNN. Mr. Ain, how do you respond to the argument that Mr. Adelberg made that these electric companies are simply becoming delivery systems and therefore should not be under a purchasing mandate?

Mr. AIN. It is interesting. I addressed in my earlier remarks, and I will make it clear one more time if I could, under the avoided cost standard in place today at FERC, under the PURPA legislation which says that the utilities should pay no more than they otherwise would have paid had they done it themselves, if they are not doing it, there is nothing they are required to pay. If they are not actually in the supply business, PURPA doesn't say that you have to buy what you don't need. It says you have to buy what you could avoid. If they not avoiding anything——

Mr. WYNN. Mr. Adelberg makes the argument that they would be forced to purchase it and then resell it——

Mr. AIN. I don't believe that is technically or legally or in any way correct.

Mr. WYNN. Thank you.

Ms. Bode, I am impressed with as a low-cost State you have moved to deregulation. Do you believe that consumers will save in a low-cost State such as yours under a deregulation scheme, and if so, approximately what would be your rough estimate of the consumer savings?

Ms. BODE. I think that is one of the most difficult issues that, frankly, we face. That is why in my testimony I stated that I think some of the issues that we look at are a little different, and the reasons for going forward with electric restructuring are a little different.

Mr. WYNN. Not based on consumer savings?

Ms. BODE. What we are hopeful for is that the consumer savings will come down the line. We realize that electric restructuring is coming all around us. We want to be positioned to protect and to compete in that marketplace.

We believe because we have one of the largest resource bases that is really going untapped in terms of gas supply, that we can increase electric generation in the State of Oklahoma by using that gas supply in the future, and that we can maintain an abundance of electric generation capacity in Oklahoma that will keep electric prices at a reasonable level. And we are, I guess, looking right now and making sure as part of this restructuring processes that electric prices for residential consumers will not go up and making sure that, hopefully, with commercial and industrials, that they go down as well, that they kept level, and that they will go down. So it is the idea of doing no harm and with the hopes that we can do even better in the future by positioning ourselves as opposed to not——

Mr. WYNN. Can I get in one extra question, Mr. Chairman?

Mr. WHITFIELD. Yes, sir.

Mr. WYNN. I think that you indicated in your testimony that there was several new gas-fired facilities for electricity generation either being built or have been built in your State?

Ms. BODE. They are on the drawing board.

Mr. WYNN. On the drawing board.

If you don't go to full deregulation until 2000, are they subject to a stranded cost problem at some point?

Ms. BODE. No. In fact, they are not being built by our investor-run utility.

Mr. WYNN. Who are they being built by?

Ms. BODE. They are being built by independent power marketers, companies like his, with the hope that because they are being built close to major transmission line facilities, and they are also close to major gas pipelines, so they know that they will have a sure source of fuel in the future, and they are going to be very, very efficient plants. At least they are on the drawing board to do that right now.

Mr. WYNN. Thank you for your testimony.

Thank you, Mr. Chairman.

Mr. WHITFIELD. I just have a couple of brief questions for Mr. Andelman. I know it has been a long day, and that we will con-

clude with panel one, and we will move on to panel two. But BJ is a warehouse?

Mr. ANDELMAN. Wholesale club.

Mr. WHITFIELD. I think you indicated that you have about 98 or 96 facilities. Could you give me a breakdown right now of the fuel that is used to generate the electricity that you purchase; what percent is green, what percent is coal, what is percent is——

Mr. ANDELMAN. I can't give you those exact figures at the moment. We are not purchasing green. We are just working on the final details of it right now and looking into other green sources. I couldn't tell you the mix in each of the 13 States.

Mr. WHITFIELD. So you don't know the mix?

Mr. ANDELMAN. Not to the kind of detail that you are looking for.

Mr. WHITFIELD. Okay. I want to thank you very much—oh, Mr. Pickering, you have another question?

Mr. PICKERING. If I could just ask Ms. Bode one quick question.

Ms. Bode, as you know, we are looking at two different approaches. One would be a date certain, and one would be an approach that would remove all barriers, whether it is PUHCA, PURPA, established reliability, transmission, those types of issues that would set the rules for competitive policy, but not have a date certain as part of that or an opt-out, some flexible date certain. From your point of view, from the State perspective, do you support one approach over the other?

Ms. BODE. We have a date certain in our legislation in Oklahoma, which is July 1, 2002, but we have flexibility in that date if we don't get the problems solved that are critically important to the State of Oklahoma. That is not a drop-dead date. So I think in answer to your question, I think it is critically important to have flexibility in that date so that you make sure that you get the problem solved as opposed to being held firm to a date certain.

Mr. PICKERING. To that objective of flexibility, does that argue for a date certain from a Federal perspective or from a removal of barriers?

Ms. BODE. I think removal of barriers and addressing the issues is what critically important. I do think it is important to give people an idea of what you are shooting for, but with the flexibility of not having it be a drop-dead date.

I think it is important for the States to have some certainty in knowing what we are doing, what target you all are trying to meet. I don't know that that necessarily needs to be a drop-dead date where once that date is passed, it goes into effect automatically.

These issues, we have got to work in partnership together. Let me tell you, this is a real scary proposition, having worked through the whole telecommunications issue where we are dealing with things, slamming, and consumer issues that are really serious. If we go to this same sort of process, put this in place, and we have those problems with our electric service, it could have incredibly serious consequences. We have got to work as a team. There needs to be flexibility built in, and I really welcome and thank you for the opportunity to have this dialog.

Mr. PICKERING. Thank you, Ms. Bode.

Mr. WHITFIELD. I want to thank panel one for your time and patience. Your testimony was particularly important. We appreciate

you coming down and look forward to working with you through this process.

I would like now to call panel two. Mrs. Karen O'Neill with Green Mountain Energy; Mr. Donald Niemiec with Union Pacific Resources; Mr. Paul Agathen with Energy Supply Services; Mr. Tom Casten with Trigen Energy Corporation; Mr. Armond Cohen, Clean Air Task Force; and Mr. Lawrence Codey with the Public Service Electric and Gas Company.

I would recognize the gentleman from New Jersey for the purpose of introduction.

Mr. PALLONE. Thank you, Mr. Chairman. I just wanted to mention the presence on our panel of Larry Codey as one of the witnesses. Larry is someone who really has built the reputation as one of the most respected and well-liked business leaders in our State of New Jersey, not just on utility issues, but just in general. He has been the president of PSE&G, Public Service Electric and Gas, since 1991. And, basically, it has been his vision for the company and for the business community—his whole vision, I should say, is built on a philosophy that economic growth and environmental progress are objectives that are entirely compatible, and that sustained economic progress will not be possible without prudent stewardship of our States' and our Nation's environmental resources.

I think that many people know that New Jersey is very concerned about the need to bring economic growth and environmental progress together. He has basically driven his company to a leadership role within the industry on improving its environmental standing, and he has been an outspoken proponent for the electric power industry to embrace change in terms of competition and restructuring as well as coordinating that with environmental policies.

I also wanted to say, Mr. Chairman, that with Larry's active support, New Jersey is implementing one of the Nation's most comprehensive and, I think, progressive electric industry restructuring plans, which includes significant rate cuts, shopping credits for all classes of customers, and tough consumer protection and environmental disclosure provisions. Beginning August 1 of this year, all New Jerseyans will be able to choose their energy suppliers.

I guess that I could also add that he is a constituent of mine, which probably ultimately is the most important thing.

Thank you for being here, Larry.

Thank you, Mr. Chairman.

Mr. WHITFIELD. Thank you.

We have a distinguished panel here. We are looking forward to the testimony of all of you. I do want Mr. Casten to know that we have his book here, so we are going to be reading that. In fact, some of it has already been read.

Each of you will have 5 to 6 minutes for your opening statement, and we will begin with Ms. O'Neill.

STATEMENTS OF KAREN O'NEILL, VICE PRESIDENT, NEW MARKETS, GREEN MOUNTAIN ENERGY; DONALD W. NIEMIEC, VICE PRESIDENT, UNION PACIFIC RESOURCES ENERGY MARKETING; ARMOND COHEN, DIRECTOR, CLEAN AIR TASK FORCE; PAUL AGATHEN, SENIOR VICE PRESIDENT, ENERGY SUPPLY SERVICES; LAWRENCE R. CODEY, PRESIDENT AND CHIEF OPERATING OFFICER, PUBLIC SERVICE ELECTRIC AND GAS COMPANY; AND THOMAS R. CASTEN, PRESIDENT AND CEO, TRIGEN ENERGY CORPORATION

Ms. O'NEILL. Good afternoon. I am Karen O'Neill, vice president of new markets at Green Mountain Energy, the Nation's leading retailer of cleaner and renewable electricity. Thank you for inviting me to testify today.

Mr. Chairman, Green Mountain Energy supports and appreciates your leadership and the work of other committee members on this important issue. We feel strongly that Congress should pass legislation that requires the States to embrace meaningful competition and offer leadership and direction on the important issues.

To understand our position, you need a little information about our company. Green Mountain has a simple, yet ambitious mission, to use the competitive market to change the way that electricity is made. The generation of electricity is the No. 1 source of industrial air pollution in this country. Power generation contributes to smog, acid rain, and climate change, to list just a few.

Green Mountain believes and has evidence that if consumers were given the ability to choose their electric supplier, many will select power sources that include generation from renewable and cleaner resources as a way to improve the environment. Market forces can and will deliver cleaner electricity to the grid as customers use their purchasing powers to fight air pollution. Green Mountain is built on this principle of aligning the market economy with the customers' environmental values.

Our company was founded in 1977 to sell electricity from renewables and cleaner energy resources, primarily to residential customers in States that opened up to competition. We have signed up more than 100,000 customers in California and Pennsylvania, the first two States to create competitive markets. Our long-term plan is to sell cleaner electricity in each State where a viable competitive market is created.

There is already ample evidence that informed consumers want cleaner energy. In Pennsylvania, the most competitive market in the country today, one-third of residential customers have switched since the market fully opened to competition, have chosen green energy products even though these are not the cheapest options available on the market. This experience provides compelling evidence that there is a significant market for green energy if competitive marketplaces are created.

Consumers' choices are already having an impact in California and in Pennsylvania. In direct response to customers' demands, Green Mountain has contracted for existing renewables and has begun to bring new cleaner sources to the market. In Pennsylvania we have contracted to have 130 kilowatts of solar generation built. In California three wind turbines totaling two megawatts are under construction to serve our customers.

This is a small, but significant new generation. The decisions our customers have made will eliminate more than 100,000 pounds of nitrogen oxide and sulphur dioxide emissions and millions of pounds of carbon dioxide emissions. This first step on the journey to a cleaner electricity future was made possible by a competitive market. We know that when consumers are educated and empowered, a large number will choose environmentally preferable sources of electricity. As our company grows in the years to come, we expect to spend hundreds of millions of dollars educating consumers.

We have, by the way, already spent a considerable amount of money educating consumers about the environmental consequences of electricity production. And I have with me, and would be happy to pass these around later on for you to look at, copies of billboards and advertisements that have run in both the States that we are operating now. They provide a good deal of education as well as advertising for environmental resources.

We ask Congress to help empower those consumers to use their purchasing dollars to support those resources. Congress should make a strong public expression of support for true competitive markets for all consumers. We need fair and easy access to the transmission and distribution facilities owned by State-regulated utilities. It is also critically important that States adopt market structures that produce meaningful price competition; that is, that the market structures allow new entrants to come in and compete successfully on the basis of price with the default service that is provided to consumers who don't switch electricity providers most frequently by utilities.

Other elements that are important to a vibrant retail market include a strong wholesale market; rules that make it easy for customers to switch suppliers; standardized data transactions; consumer education; and strong affiliate rules for utilities.

There are as well several things that Congress could do to strengthen the market for green energy specifically. First, it can require utilities and retailers alike to disclose the environmental attributes of electricity they sell. This will empower consumers to select cleaner products and, one customer at a time, build the demand for new renewable generation.

Congress could also create a systems benefits charge to support the development of new renewables, energy efficiency programs, and consumer education. Other environmental provisions that Congress could consider include emissions standards for older generation plants that are comparable to those in place for newer plants and a renewables portfolio standard.

Green Mountain is working with a diverse group of stakeholders to develop a mix of environmental and other policies that would be acceptable to all parties as part of a comprehensive restructuring bill.

To summarize, we at Green Mountain believe that Congress can play a strong role in ensuring a viable competitive market for electricity. If a market is created, we are confident that a large number of customers will choose environmentally preferable sources of energy and, as a consequence, can make a significant difference in the quality of our environment. Thank you.

[The prepared statement of Karen O'Neill follows:]

PREPARED STATEMENT OF KAREN O'NEILL, VICE PRESIDENT, NEW MARKETS, GREEN MOUNTAIN ENERGY

Good Morning: I am Karen O'Neill, vice president of New Markets at Green Mountain Energy, the nation's leading retailer of cleaner electricity. We are based in Burlington, Vermont. Thank you for inviting me to testify today. My testimony will touch on several issues, but will focus primarily on the tremendous opportunity we have to significantly improve the environment as we move toward a competitive market for electricity.

Mr. Chairman, Green Mountain Energy supports and appreciates your leadership and the work of other committee members on this important issue. Electrons follow the laws of physics, not the laws of our 50 states. They flow across state lines in interstate commerce. We feel strongly that Congress should pass legislation that requires the states to embrace meaningful competition and offer leadership and direction on several important issues. I'll touch on some of these later in my presentation.

To understand our position, you need a little information about our company. Green Mountain Energy has a simple yet ambitious mission: To use the competitive market to change the way electricity is made. The generation of electricity is the number one source of industrial air pollution in this country. Power generation contributes to smog, acid rain, excessive nutrient loading to our streams, rivers and lakes, climate change and mercury pollution to list just a few.

Green Mountain Energy believes and has evidence that if customers are given the ability to choose their electric supplier they will select power products that include generation from renewables and other cleaner sources as a way to improve the environment. Market forces can and will deliver cleaner electricity to the grid and customers can and will use their everyday purchasing dollars to fight air pollution. Green Mountain is built on this principle of aligning the market economy with customers' environmental values.

New, cleaner generation is the best way to reduce industrial air pollution.

Green Mountain Energy was founded in 1997 to sell electricity from renewables and cleaner sources primarily to residential customers in states that deregulate and embrace competitive markets. We have signed up more than 100,000 customers in California and Pennsylvania, the first two states to create a competitive market. This summer we will enter New Jersey, the next competitive market to open. We have been active in the development of legislation and/or rules in New England, New York, Maryland, Texas and other states, and our long-term plan is to sell cleaner electricity in each state where a viable competitive market is created.

Competitive markets have attracted both retailers that compete on price and those that offer "green energy," or electricity from cleaner sources. There is already ample evidence that informed consumers want cleaner energy. In Pennsylvania one third of the customers that have switched have chosen green energy products even though they are not the cheapest option. We believe there is a tremendous market for "green energy" if a real competitive marketplace is created.

We have found that cleaner energy options can be cost competitive as well when the market is structured properly. Green Mountain Energy offers three products in Pennsylvania including one that is priced competitively with products offered by existing utilities. Green Mountain's participation in the market has already produced results.

In direct response to customers' demand in Pennsylvania, Green Mountain has contracted for existing renewables and has begun to bring new, cleaner sources to the market. Green Mountain has contracted to have 130 kW of solar generation built there. The first of the solar facilities being built to serve Green Mountain began generating power on April 22 in Conshocken. This 43kW solar array is by far the largest in the Commonwealth.

In California, three wind turbines totaling two megawatts are now under construction to serve our customers there. These are the first wind turbines built as a result of customers choosing renewable energy in a competitive market.

Soon we expect to have new wind turbines built to serve our customers in Pennsylvania. We have a contract with a wind developer to assess sites in Pennsylvania. The developer has reviewed more than 20 sites throughout the state, and we are narrowing our search to a few locations. We expect to have brought the first commercial wind generation to Pennsylvania by early 2000.

The 43kW solar array in Pennsylvania and two megawatts of new wind in California were developed because customers voted with their wallets to have them

built. These facilities are going up in record time. It took just a few months to get the solar array operational. In comparison, it takes years to permit and site a fossil fuel plant and nuclear plants can not be sited at all.

This is small, but significant, new generation. The decisions our customers have made in California and Pennsylvania will eliminate more than 100,000 pounds of nitrogen oxide and sulfur dioxide emissions, and millions of pounds of carbon dioxide emissions. This first step on the journey to a clean electricity future was made possible by Green Mountain and a competitive market. We know that when consumers are educated and empowered, a large number will choose environmentally preferable sources of electricity. As our company grows in the years to come, we expect to spend hundreds of millions of dollars educating consumers. We ask Congress to help empower them.

What can be done to improve the competitive market and the market for green energy?

First Congress should make a strong public expression of support for competitive markets for all customers. We need fair and easy access to all the transmission and distribution facilities owned by state-regulated electric utilities. It is also important that states adopt market structures that produce meaningful price competition. Inevitably in a competitive market, a standard offer price, or what is sometimes called the "default price" or "price to beat," is created. This is the price customers who do not switch will pay for the electricity they buy. Often, but not always, the existing utility becomes the standard offer provider and retains the customers who choose not to switch.

The "standard offer" price should include all costs of generation and retail service. In some states some of these are categorized as distribution costs. In a competitive market distribution costs are still regulated and are included as a separate charge on customers' bills. So it is to the utilities' advantage to shift as many costs as they can to the distribution side of its business. This artificially lowers the standard offer and gives the utilities an unfair advantage over the new entrants in the market who have to include these costs in their retail rates.

When the standard offer is priced properly, as it was in much of Pennsylvania, competition is fierce. When it is set artificially low, as it was in Massachusetts, there is no competition. Customers do not win if the price is set artificially low. They lose the cost savings, innovation, and environmental benefits that will flow from competition.

Other elements that are important to a vibrant retail market include a strong wholesale market, rules that offer customers easy access to the market, standardized data transactions, consumer protection and strong affiliate rules for the utilities. I'll touch on just the last one here.

The electricity market needs real competitors. Utilities should not be able to create shadow affiliates that presume to offer competition, but are really designed to protect market share. Clearly defined affiliate rules that mandate a meaningful arms-length relationship between a utility and its stepchild are critical to the success of the market.

There are several things Congress can do to strengthen the market for green energy specifically.

First, it could require utilities and retailers alike to disclose the source and cost of the electricity they sell. Consumers purchasing electricity in a competitive market need more information about the environmental characteristics of the power that they buy. This will empower them to select cleaner products and one customer at a time build the demand for new renewable generation to be built.

Second, Congress should create a system benefits charge to support the development of new renewable resources, energy efficiency programs and the development of consumer education programs that alert customers to the important issues addressed in deregulation.

Consumer education is key to a successful competitive market. It is essential to a successful green market. Green Mountain Energy's advertising and marketing have played an important role in California and Pennsylvania. Marketing is information. Our marketing is a major environmental education campaign, alerting people to the problems that result from making electricity. We've found that most people have no idea that electric generation is a major pollution source. So first we have to tell them that and then give them information they need to make an informed choice.

There are other environmental provisions that Congress should, and no doubt will, consider as part of the restructuring debate, including a Renewables Portfolio Standard and emissions standards for generation plants built before 1977 that are comparable to standards in place for newer plants. While Green Mountain is enthusiastic about the potential for the competitive market to produce environmental ben-

efits, the market does not obviate the need for sound environmental policies. Green Mountain is working with a diverse group of stakeholders to develop an appropriate mix of environmental and other policies that should be part of a comprehensive restructuring bill.

We believe that to develop a market that is exciting, viable and attractive to consumers, we must work effectively with a wide variety of interested parties. We urge Congress to continue creating processes that are inclusive and consider the needs of all the players in the new competitive market.

Thank you

Mr. WHITFIELD. Thank you, Ms. O'Neill.

Next will be Mr. Niemiec.

STATEMENT OF DONALD W. NIEMIEC

Mr. NIEMIEC. Thank you, Mr. Chairman, good afternoon, and members of the committee. I appreciate the opportunity to be here today to participate in today's hearing and thank you for the invitation.

I am Don Niemiec, vice president of marketing for Union Pacific Resources Group. Union Pacific Resources Group is one of the largest exploration and production companies in the United States, and it is the No. 1 driller among both independents and majors for the past 7 years in the United States. Our company is located in Fort Worth, Texas. For the record, let me note that I reside in Arlington, Texas, which is in the prestigious Sixth Congressional District, which is ably represented in Congress by Congressman Barton.

Mr. Chairman, my company and organizations that I represent support comprehensive Federal legislation that restructures the electric industry and ensures open and nondiscriminatory access for all market participants.

There are three issues that I would like to discuss today. The first is PURPA. NGSA members have long opposed energy mandates. Consequently, we favor the repeal of PURPA as one aspect of restructuring legislation. PURPA was instituted at a time when the U.S. believed that we were running out of fossil fuels. Many believed that PURPA would provide the boost that would make alternative fuels, especially renewables, cost-competitive. We now know that fossil fuels remain abundant and cause competition. For most, renewables remain an elusive goal.

PURPA repeal should not be retroactive. Any restructuring bill should guarantee the sanctity of existing contracts and apply to all fuels. A restructuring bill should not repeal PURPA with regard to gas-powered generation while putting in place new PURPA mandates of the use of renewables.

The second issue is stranded costs. Five years ago many saw the utilities' stranded costs as large and their potential Waterloo. Today that is no longer the case. Estimates of the size of stranded costs have shrunk rapidly as States realize that they can be mitigated through the sale and appropriate valuation of existing utility assets.

NGSA members support utilities in their quest for recovery of verifiable stranded costs. Although not every State has a sterling record on stranded costs, there is a general trend toward reasonable State action. As a consequence, NGSA believes Congress should not dictate a single nationwide approach, nor should it place

unreasonable roadblocks in the path of States working toward a just resolution of the stranded costs problem.

The last issue that I would like to discuss pertains to limiting electric restructuring impact on the environment. We believe that market-based approaches are the best way to protect the environment.

I will discuss two; first, a fuel-neutral standard. These standards can play a critical role in environmental policy since they require all fuels to achieve the same level of emissions. Currently, cleaner burning fuels are disadvantaged because past regulations do not require all fuels to meet the same standard. Fuel neutrality removes the preferential treatment that dirty fuel sources have enjoyed for the last two decades.

The second example of market-based approach is the use of output-based standards as promulgated in the new source performance standards. An output-based approach requires industry to meet emission levels based on each unit of energy produced regardless of the fuel used.

Competition and open markets offer excellent opportunities to establish protocols that will benefit the environment. However, the Nation will not reap all of the benefits that natural gas and other clean fuels can provide if the Federal rules governing the electric power industry create an unlevel playing field. Congress must ensure that the marketplace, not the Federal Government, chooses the winners and losers.

It would be counterproductive for Congress to create a preference among fuels used for electric generation. The renewable portfolio mandate that several bills have advocated runs counter to the premise behind deregulating the electric industry. Mandates reduce customer choice and unjustly result in increased costs to consumers. Natural gas producers do not oppose renewable energy. Rather, we oppose mandatory use of any fuel.

Recently we have seen the advent of green power, giving consumers the choice to purchase electricity from renewable energy sources. This is a market-based solution that is working to help renewables penetrate the market. It is now time for Congress to open the markets and let competition and customer choice determine the national generation portfolio. Thank you.

[The prepared statement of Donald W. Niemiec follows:]

PREPARED STATEMENT OF DONALD W. NIEMIEC, VICE PRESIDENT, UNION PACIFIC RESOURCES GROUP

Good morning Mr. Chairman, members of the committee. I appreciate the opportunity to participate in today's hearing and thank you for your invitation. I am Don Niemiec, Vice President of Union Pacific Resources Group. Union Pacific Resources is one of the nation's largest independent gas and oil exploration and production companies, as well as the #1 domestic driller for the past seven years. I am also the chairman of the Natural Gas Supply Association's (NGSA) demand committee and the gubernatorially appointed chair of the Texas Energy Coordination Council.

Mr. Chairman, my company and the organizations that I represent support comprehensive federal legislation that restructures the electric industry and ensures open and nondiscriminatory access for all market participants.

Today I would like to discuss three issues that will affect the debate over restructuring the electric industry. The first is PURPA.

As you are undoubtedly aware, NGSA members have long opposed energy mandates. Consequently, NGSA favors repeal of the public utilities regulatory policies act as one aspect of federal restructuring legislation. PURPA was instituted at a

time when the U.S. believed we were running out of fossil fuels. Many believed that PURPA would provide the boost that would make alternative fuels—especially renewables—cost-competitive. Of course, we now know that fossil fuels remain abundant, and cost competition from most renewables remains an elusive goal.

Nonetheless, we should not condemn PURPA as a total failure. it had, in fact, several largely unanticipated benefits:

- PURPA demonstrated that independently produced power could contribute significantly to energy resources.
- PURPA provided a prototype for open transmission access—a cornerstone of a restructured electricity industry.
- PURPA also permitted efficient, low-emission natural gas to compete for the electricity generation market in the wake of the misguided fuel use act.
- PURPA opened the marketplace to increasingly efficient technologies that in many circumstances make natural gas second only to hydropower as the low-cost generation fuel.
- As a result, gas-fired capacity has increased dramatically in recent years, and generation has become the gas industry's fastest-growing market.
- And use of gas instead of coal has spared the environment billions of tons of air pollutants.

PURPA repeal should not, of course, be retroactive. A federal restructuring bill should guarantee the sanctity of existing contracts. But repeal should apply to all fuels, across the board.

A federal restructuring bill should not, in essence, repeal PURPA with regard to gas-fired generation while putting in place a new PURPA that mandates use of renewables.

The second issue I would like to discuss is stranded costs. Five years ago, when national leaders began to move seriously toward electricity restructuring, many saw utilities' large stranded costs as their potential waterloo. Today, that is no longer the case. estimates of the size of stranded costs have shrunk rapidly as states realize they can be mitigated through the sale and appropriate valuation of existing utility assets.

NGSA members support utilities in their quest for recovery of verifiable stranded costs, and we applaud the initiatives many have taken to mitigate them. We recognize that stranded-cost actions have not been the same in every state because issue surrounding stranded costs vary from state to state. what we are seeing is that a number of states are handling the stranded cost issue with compromise and consensus appropriate to their specific situations.

Although not every state has a sterling record on stranded costs. but there is a general trend toward reasonable state action. As a consequence, NGSA believes Congress should not dictate a single nationwide approach, nor should it place unreasonable federal roadblocks in the path of states working toward a just resolution to the stranded cost problem.

The last issue I will discuss regards limiting electric restructuring's impact on the environment. Market-based approaches are demonstrably the best method for protecting the environment. Congress must ensure that electric restructuring legislation and environmental regulations result in all generating fuels competing on a comparable basis in a competitive electric power market.

I will briefly discuss two examples of how market-based solutions are currently being used to protect the environment. First, are fuel-neutral standards. Through the NGSA, natural gas producers have played an active role in the development of these standards in the rules governing ozone transport, also know as the NO_X sip call.

Fuel-neutral standards are critical in environmental policy because it requires all fuels to achieve the same level of emissions. Currently, cleaner burning fuels are disadvantaged because past regulations do not require all fuels to meet the same standard. Fuel neutrality removes the preferential treatment that dirty fuel sources have enjoyed for the last two decades. This approach also reduces the regulatory burden on companies and enables industry to make efficient, cost-effective decisions.

The second example of a market-based approach is the use of output-based standards as promulgated in the new source performance standards. An output-based approach requires industry to meet emission levels based on each unit of energy produced, regardless of which fuel is used.

Natural gas producers support output-based standards because they:

1. assure a more flexible market-based system,
2. help industry meet emissions targets at lower cost, and
3. tend to increase the use of cleaner fuels.

This approach has the collateral effect of reducing the emission of other air pollutants. Competition and open markets offer excellent opportunities to establish protocols that will benefit the environment.

However, the nation will not reap all of the benefits that natural gas and other clean fuels can provide if the federal rules governing the electric power industry create an unlevel playing field.

Congress should ensure that the marketplace, not the federal government, chooses the winners and losers. New policies adopted by the congress should not guarantee market share to any fuels nor insulate any fuels from the challenges of a fully competitive marketplace.

It would be counterproductive for congress to create a preference among fuels used for electric generation. The renewable portfolio mandate that several congressional bills have advocated, runs counter to the premise behind deregulating the electric industry. Mandates reduce customer choice, and unjustly result in increased costs to consumers.

Natural gas producers do not oppose renewable energy, rather we oppose the mandatory use of any fuel or generating source. In support a position mandating renewable energy, some have suggested that we are running out of fossil fuels. let me assure you, this is definitely not the case.

The potential gas committee, in a report released just last month, estimates that the United States has an estimated 1,205 trillion cubic feet of natural gas resources, including proven reserves. That represents about 60 times current annual production. We have more than enough natural gas reserves to meet current and projected demand.

Thus, it is difficult, if not impossible, to justify forcing consumers to pay for the deployment of expensive renewable technologies on this basis.

Perhaps Congress feels that renewables are not able to compete in today's market and won't be built without a mandate. Once again, let me assure you that this is not the case.

In a recent resource for the future study, researchers found that during the last 30 years, wind and biomass sources have exceeded market penetration projections. The study also found that all renewable technologies have succeeded in meeting expectations with respect to cost.

In addition, we have seen the advent of green power in deregulated states, giving consumers the choice to purchase electricity from renewable energy sources. Green power is a market-based solution that promotes the use of renewable energy. Green power is working, and has experienced tremendous growth in the past few years.

Given these trends, it is difficult to understand why renewable energy needs mandate protection. Congress has already enacted tremendous tax incentives for the development of renewable energy,

And due to the fact that renewables are well on their way to making significant penetration into the market, we feel that mandating a renewable portfolio standard would be inappropriate and unnecessary.

It is now the time for congress to open the markets and let competition and customer choice determine the national generation portfolio. In conclusion, the natural gas industry encourages and embraces competition.

We are prepared to meet the challenges of a competitive and growing electric power market. Competitive commodity prices, low transportation costs, and highly efficient generation technology make natural gas affordable and cost competitive with other fuels.

It is also a preferred energy source because of its environmental attributes. We believe that an open and nondiscriminatory electric power market will maximize the use of natural gas and that, in turn, will result in substantial economic and environmental benefits to the United States.

Our biggest concern is centered on the potential of preferential treatment of one fuel versus another. Mandates and regulations that allow different emission levels for different types of fuels will not work in a competitive market. Ultimately, consumers will bear the added costs of inefficiency and waste.

We urge you to let the market work and to defeat any legislation that arbitrarily favors one fuel over another.

Thank you.

Mr. SHIMKUS [presiding]. Thank you.

Next we will hear from Mr. Armond Cohen, the director of the Clean Air Task Force. Welcome, and you are recognized for 5 minutes.

STATEMENT OF ARMOND COHEN

Mr. COHEN. Thank you, Mr. Chairman and members of the subcommittee. My name is Armond Cohen, I am the director of the Clean Air Task Force, which is a project that works with about 50 environmental groups around the country, including all of the major national environmental groups and a number of State and local regional groups, with an especially large concentration in the Southeast U.S. and the Midwestern U.S., which are areas that are really most heavily impacted by power plant air pollution.

Earlier today, it was suggested that maybe this is just a Northeast issue or regional war of some kind between the Midwest and the Northeast. I want to assure you that an awful lot of our constituency is based in the Southeast, States like Georgia, Tennessee, South Carolina, Florida; and in the Midwest in the arc of the Ohio Valley, which contains a large number of the grandfathered coal plants.

This is very important, because, again, I think there is a mythology out there that somehow this is just about the transport of air pollution from the Midwest to the Northeast. In fact, some of the greatest impacts from soot, smog, acid rain, flying particle emissions, and other environmental problems that stem particularly from the power sector and some of the highest asthma emergency admission rates on bad summer days are in the Ohio valley and in Midwestern States like Illinois, Indiana, Ohio, and in Southeast States like Tennessee and Georgia.

So the issue that I want to address today, which is the persistence of these disparate environmental standards, is really fundamentally a national issue; it is not a regional issue. I think that is an important point to make because it is often spun very much the other way.

The other point that I want to make is that as a result of that geographic distribution of damage from power plant emissions, this is an issue that has a lot of resonance outside the Beltway. There are a lot of environmental groups in States like Illinois, Florida, Ohio, Georgia, Michigan, Texas that are focusing on this problem.

We are beginning to see some leadership on this grandfathered power plant issue from States. I included in my testimony, for example, Governor Cellucci in Massachusetts has gone forward, with the staff, of degrandfathering older power plants in Massachusetts. Just last week Governor bush in Texas indicated his support for a bill that would at least provide some partial degrandfathering for gas and coal plants in the State of Texas. Now, it is not a full degrandfathering, but recognized that there are very significant problems with public health and the environment from power plant emissions and the persistence of these disparate emission standards.

The focus of my testimony, which I am not going to repeat at length here, is, of course, how do we go about addressing this disparate emissions problem, and what is its relationship to restructuring. We really make two arguments. The first is that this is an unprecedented reshuffling of the deck, if you will. Once in a century probably, reorganization of this industry and the environmental regulatory picture for that industry is intimately bound up with the marketplace. It is important as we pursue restructuring

to make sure that we really are addressing the full range of costs and benefits that flow from the system.

The second point is a more specific one, and I think my colleagues can probably make more credibly, and I think Mr. Niemiec did in his testimony, which is that allowing this grandfathered power plant two-tiered regulatory system to persist where plants built before 1977 can pollute at 4 to 100 times the rate of new plants is really a recipe for a failed market. Fundamentally what we are talking about is very limited market entry for newer plants, newer, cleaner efficient plants, certainly as compared with what those entry levels would be and those efficiency levels would be if we leveled the playing field, as the previous witness suggested, by requiring equal environmental performance standards across the board.

That is really the thrust of the testimony. By making that point, I don't mean to scant the need for other environmental policies, although my testimony does not address those points.

Just finally, a brief and maybe anticipatory word on the American Trucking decision from the DC circuit last Friday. Our analysis is this is very much an aberrant decision that is very much out of the mainstream, the jurisprudence surrounding administrative law. However, I would argue that, if anything, that case and the uncertainty it creates argues for Congress to more directly address air emissions issues in legislative hard-wired fashion, particularly appropriate as part of a restructuring bill, rather than allow the uncertainty that that decision will no doubt create to persist.

Thank you very much, and I would be happy to take any questions.

[The prepared statement of Armond Cohen follows:]

PREPARED STATEMENT OF ARMOND COHEN, DIRECTOR, CLEAN AIR TASK FORCE

Mr. Chairman, and Members of the Subcommittee: My name is Armond Cohen.[1] I am Director of the Clean Air Task Force, a project of Pace University's Center for Environmental Legal Studies. The Clean Air Task Force assists and works with more than 50 state, regional and national environmental organizations in the United States to educate the public and policymakers about the need to reduce air pollution from the nation's power plants. These organizations work in all 50 states, with especially strong concentration in the Midwest and Southeast—regions that bear a disproportionately large environmental impact from power plant air emissions. Today, however, I am testifying solely on behalf of the Clean Air Task Force.

SCOPE OF TESTIMONY

Your hearing today focuses on, among other things, electricity competition and the environment. My focus will be on direct air emissions concerns rather than other environmental concerns in restructuring such as the development and commercialization of renewable energy and energy efficiency; environmental disclosure; and other structural issues which have potential environmental consequences, such as the structure of stranded investment recovery.

ELECTRIC POWER PRODUCTION AND THE ENVIRONMENT

The quality of the nation's air and environment in the next century will depend significantly on the environmental profile of the nation's electric power sector. Simply put, the electric industry is the nation's largest industrial air polluter. It stands at the center of the major environmental problems dominating today's front pages and the environmental agenda for the next several decades. For example,

[1] My resume is Attachment 1 to this testimony.

- Power plants contribute about a third of the nation's smog-causing chemicals, and as much as 50% in states such as Ohio where chronic smog exposures are some of the worst in the nation.
- Power plants contribute about two-thirds of the nation's sulfur dioxide, producing acid deposition and haze which has reduced visibility in the Central and Eastern United States by 50% or more in recent decades, and by up to 80% in some national parks. See Attachment 2.
- Power plants contribute a third to half of the deadly fine soot particles in the Central and Eastern United States.
- Power plants likely contribute 30% or more of the emissions of toxic substances such as mercury.
- Power plants are responsible for roughly a third of the nation's man-made carbon dioxide emissions, which are likely contributing to long-term global climate change.

The nation's electric power industry has made some environmental progress over the last two decades, in part due to technological improvements and in part due to new laws such as the acid rain provisions of the 1990 Clean Air Act amendments. At the same time, however, in part due to demand growth, in part due to changing fuel mix and an aging power plant fleet, total emissions of key power plant pollutants such as nitrogen oxides, CO_2 and mercury have risen substantially over that period.

It is also important to understand that, environmentally, all power plants are not the same. There is a huge disparity in environmental performance among fossil-fired power plants—a disparity that, as we'll discuss in a moment, has significant competitive implications.

At the heart of this disparity is plant age. The vast majority of power sector air pollution in the United States comes from power plants licensed prior to the 1980's, when tight "new source review" procedures for emissions were made fully applicable.[2] As a result, even after the Clean Air Act Amendments of 1990 are fully implemented, older coal plants will be allowed to emit at roughly four times the rate required of new coal plants—and as much as fifty to one hundred times the rate of new gas plants. See Attachment 3.

At the time this "old source" exemption was granted, it was arguably without long-term significance. Plants historically were retired and replaced every 20-30 years. However, a variety of factors, including changes in the energy market place in the last two decades have lengthened coal and oil plant lifetimes considerably over what was expected. Today, for example, about 70% of our nation's coal units predate the 1970 Clean Air Act, and fully 50% are forty years old or older—having long outlived their predicted engineering and accounting lives. See Attachment 4.

As a result, America really has three power plant fleets—two actual, and one potential. We have a large fleet of Vietnam-, Eisenhower-, even Truman-era plants running on older technology with high emission levels. We have a smaller fleet of modern, high-tech plants built in the last decade, which are four to a hundred times cleaner. struggling to break further into the market. And, finally, we have a third, potential fleet of modern, high-tech plants that are poised to enter the market and compete, but in a substantial number of cases are being kept out by environmental subsidies for the first fleet mentioned.

THE NEXUS BETWEEN THE ENVIRONMENT AND ELECTRIC RESTRUCTURING

Why are these environmental facts relevant to federal electric industry restructuring?

Harmonizing Restructuring and Environmental Policy. First, as a matter of common sense, policies affecting the shape of the electric power industry, and environmental policy, should be sensibly linked. The shape which this industry takes under competition—its starting rules, its operating procedures, its financial regulation—will have profound impacts on the quality of the nation's air, water, land, and even its scenic views. The debate underway before this Subcommittee, and eventually the full Congress, could determine the course of electric power production for perhaps the next century. If there are ways to harmonize restructuring policy with the environment, and to set the nation's most polluting industry on a more environmentally sustainable course, this is the moment to do it. Otherwise, we are condemned to be making piecemeal policy, much of it with unintended and possibly perverse consequences.

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[2] *See* D. Wooley, "Environmental Comparability," *Natural Resources & Environment* (American Bar Association Section of Natural Resources, Energy, and Environmental Law), Spring 1998 .

As noted, the environmental footprint of the electric industry is enormous. But requiring older plants to meet modern emissions standards faced by new coal plants—put aside cleaner gas-fired plants—would reduce the power sector's impact substantially, knocking down power sector nitrogen and sulfur emissions by 75-80%, for example. Reductions at this level—or greater—are likely to be needed over time to meet the nation's serious respiratory problems, and to address other persistent unsolved environmental problems such as acid rain, nitrogen saturation of estuaries and coastal waters, and haze.

Putting the industry on a swifter clean-up path is especially appropriate on grounds of public policy and efficiency as the industry is comprehensively reorganized and generating assets change hands. Buyers want to know what their environmental obligations will be. New competitors have a right to know what environmental rules will govern the new market so they can make rational investment decisions. Sellers are entitled to fair compensation for their units—but not more than the units are worth taking into account reasonably anticipated environmental burdens and the considerable costs already borne by ratepayers to amortize such units through the regulated rate base. And finally, but not lastly, the breathing public has a right *not* to see a fleet of incumbent, dirty plants *for which they have already largely paid through their rates* to recapitalized through asset sales at enormous "premium" sums which then lead to cries of poverty from buyers who claim they lack the means to meet modern air pollution performance standards.

In short, 1990's restructuring is a once-in-a-lifetime moment of capital and asset liquidity in the electric industry. It is not unreasonable public policy to expect that, as the nation's generating fleet is minted anew, a fraction of this capital flow should be allocated to redeem the environmental performance promises of decades past which were never realized.

Market Power

Second, *the environmental disparities discussed above have direct consequences for the health and vigor of the new electric markets.* Because the nation's older coal-and oil-fired power plants do not have to meet new plant standards, they enjoy a significant competitive advantage over new market entrants that must meet those tight standards. Recent quantification suggests that this "pollution subsidy" for NO_X and SO_X alone—ignoring CO_2—can confer as much as a 2 cent/kwh advantage to an older coal plant over a new combined cycle gas unit, for example. See Attachment 5.

This implicit environmental subsidy for older plants will slow market entry, retard the development of a fully functioning competitive marketplace for electric generation and entrench the market power of incumbent plant owners. That's not good for competition, and it's not good for consumers.

In March of 1997, a group of some 150 electric power producers, along with more than 20 environmental organizations, made this point to the Administration in a joint letter. See Attachment 6.

Consumer Benefits

Third, power plant emissions have significant impacts on the consumer and small business pocketbook. Direct affects include increased hospitalization and health costs, reduced worker productivity, increased health insurance premiums, and the reduced value of agricultural and tourism resources. Indirectly, failing to curb power plant emissions will require emissions reductions to come from other sectors of the economy, such as manufacturing, small business, and transportation, where it is likely that they will be far more expensive to make. If the intent of electric restructuring is to provide consumer benefits, we cannot ignore the enormous economic opportunities that would come from substantially reducing power plant emissions as part of the restructuring process.

The Federal Role

Many issues have been addressed in federal restructuring legislative proposals. But the one issue in addition to transmission policy that is indisputably of federal concern is the environment. Air emissions from power plants cross state lines—sometimes hundreds and thousands of miles. Along with federally mandated comparability for the price and service terms and conditions for access to the interstate transmission system as part of restructuring, we should also create comparability for the environmental terms of access to that transmission system.

This is one issue on which states cannot effectively act by themselves in the state restructuring process. Although some limited provisions for environmental comparability have been made in states such as Rhode Island and Massachusetts, and are presently under consideration in Texas and Illinois, it will be hard for states to act alone. Typically, plant owners and some state officials argue that air emis-

sions are a federal policy concern, especially were they are intertwined with the production of an interstate commodity like electricity. Aside from the possible local economic consequences of acting unilaterally to require power plant clean-up, many argue that it does little good for a state to clean up its local plants if upwind generators are still allowed to emit at grand fathered levels. While these arguments lack merit in many respects [3], there is a grain of truth in them: the federal level is surely the optimal place to act to harmonize environmental and electric market policy.

RECOMMENDATIONS FOR ACTION

As I noted earlier, my testimony today was not intended to cover the full gamut of policies that should be pursued in electric restructuring. Instead, I have focused on one important policy emerging from the above discussion: creating a new electric market in which modern environmental performance standards for key pollutants such as nitrogen, sulfur, C02 and air toxics must be met any generator regardless of age, grandfathered status, location, or generation efficiency. Sometimes called "environmental comparability," such a policy would not only move the nation considerably forward towards meeting its principal air quality and environmental goals. Such a policy would also ensure that the new electric markets are robust and vital, with many new market entrants—and not simply the domain of an aging fleet of former monopoly plants now hoarding the rents of environmental grandfathering.

Several bills were introduced into the House and Senate in the 105th Congress that, in various ways, attempted to accomplish this end. This issue has become a major priority for environmental and public health organizations nationally. It is a bipartisan issue—everyone breathes the air! Indeed, a Republican, Massachusetts Governor Paul Cellucci, has been the nation's leading governor in championing this idea at the state level; and Texas Governor George W. Bush has recently signaled his support for some power plant de-grandfathering in Texas as well. See Attachment 7. The time to act is now.

CONCLUSIONS

Electric industry restructuring offers a one-time opportunity to reconcile environmental policy with the emerging competitive market policy, and to get the environmental price signals right. De-grandfathering the power plant fleet and requiring all generation players to meet modern environmental performance standards should be the center of any restructuring-related environmental policy.

Thank you again for the opportunity to testify. I would be happy to answer any questions the Committee may have.

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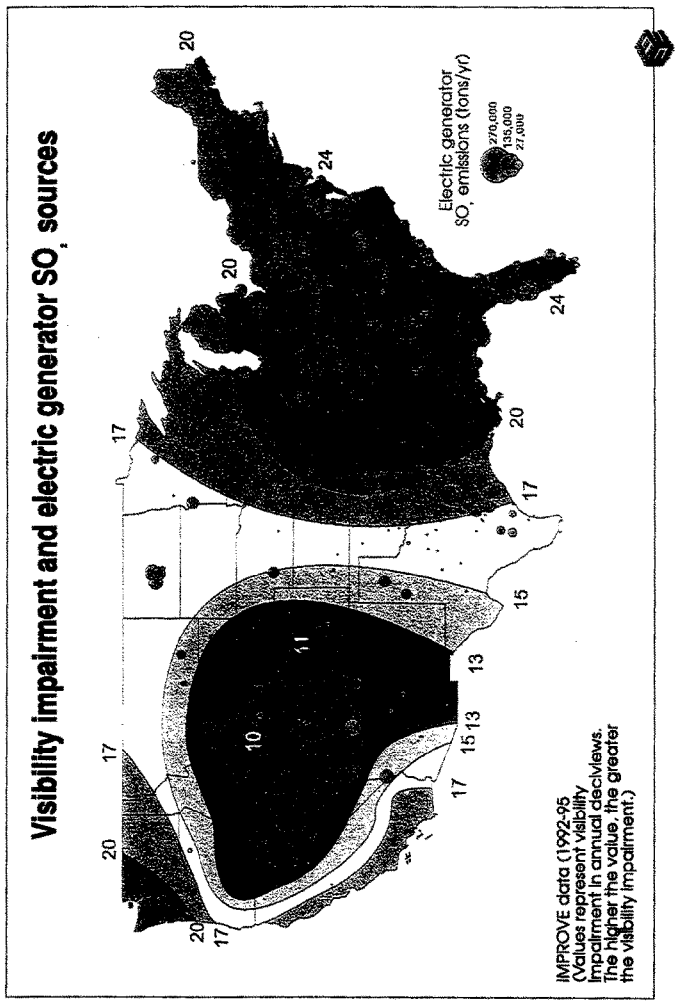
[3] Plant clean-up within states will typically reduce levels of key harmful medium-range pollutants such as smog and soot.

ATTACHMENT 2



DiMaio, Belanger lift Bruins over Hurricanes, 2-0, in playoff opener – D1

VOLUME 255 • NUMBER 113
112 pages
50 cents

The Boston Globe

FRIDAY, APRIL 23, 1999

A clear timetable for clean air

Often the best a democracy can do is come up with an OK compromise. That's what the Clinton administration has done in a new Environmental Protection Agency rule calling for the elimination of air pollution in the national parks by 2064.

Neither environmentalists nor industry is enthusiastic about it, but both can live with it. The rule was announced yesterday – Earth Day – by Vice President Al Gore, who used the backdrop of Shenandoah National Park to score political points. While the plan won't live up to White House rhetoric, and the public won't see results any time soon, the effort deserves support for looking in the right direction.

Having a date, albeit a far-off one, by which a pristine vista is expected to return to Maine's Cadillac Mountain and other national park landmarks is better than not having a date, even though the EPA plan allows states too many delaying tactics on the way to the goal.

Asking that states come up with plans for upgrading their aging coal-burning power plants is better than not addressing the issue, although again, the timetable is loose. Environmentalists say repairs could be made by 2005, and proposed legislation has called for swift action.

Armond Cohen, director of the Clean Air Task Force in Boston, notes that 115 old coal-burning plants account for 75 percent of the sulfur and small-particle pollutants in the East. He says upgrading the plants would triple visibility in the parks.

The issue goes deeper than a Kodak moment at a scenic overlook, for pollutants not only cloud the air but kill vegetation and acidify streams, posing a threat to delicate ecosystems – the jewels of the National Park Service.

The Clinton administration gets credit for a first step toward lifting the haze over those treasures; the matter has been ignored for decades. Clean air legislation in 1977 called for action, but nothing happened. The White House and Congress should press harder for more meaningful change that will make nature natural again.

"All the News That's Fit to Print"

The New York Times

VOL. CXLVIII . . . . No. 51,501 FRIDAY, APRIL 23, 1999

Cleaner Air Over the Parks

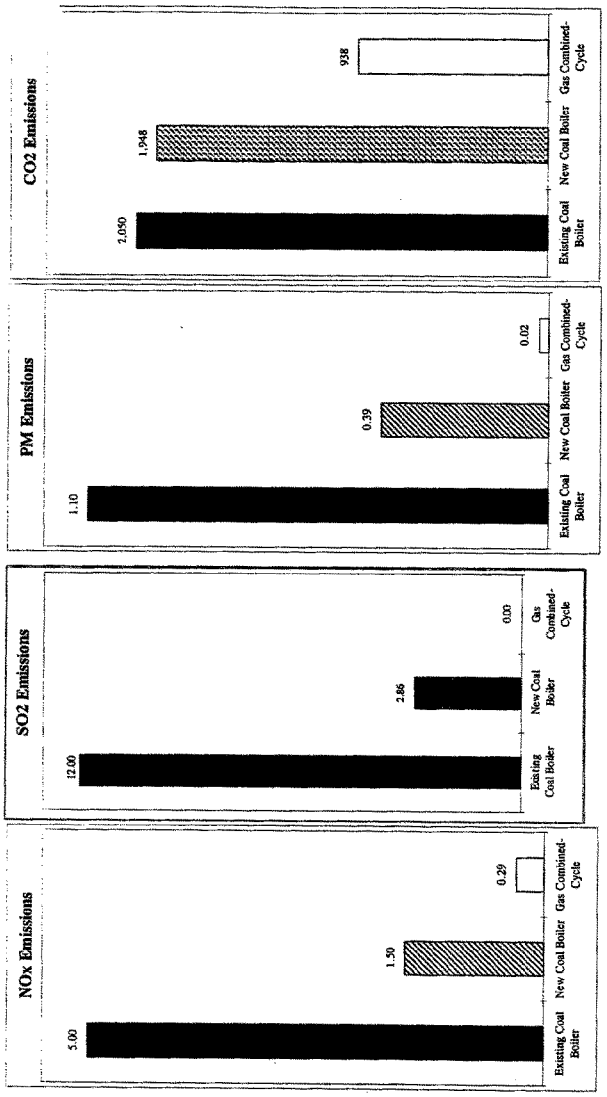
As Earth Days go, yesterday was uneventful except for one important decision by the Clinton Administration that will improve visibility in the country's wilderness and its national parks. The decision, announced by Vice President Gore during a visit to Virginia's Shenandoah National Park, gives states a firm, if distant, deadline for eliminating the smoggy haze that now ruins many of the country's most famous scenic views.

Haze reduces visibility in the Grand Canyon from 128 miles on a typically clear day to 68 miles on a typically hazy day, in Maine's Acadia National Park from 74 miles to 19, and in Tennessee's Great Smoky Mountains from 55 miles to less than 5. It is, in short, a nationwide nuisance.

Carol Browner, chief of the Federal Environmental Protection Agency, has provided a generous timetable. States must submit detailed cleanup strategies between 2003 and 2008. The deadline for clearing the parks of haze is 2064. Some environmentalists complain that her timetable is too lenient, but restoring the air in scores of parks to what amounts to pre-industrial conditions will not be easy. It will require big investments in new technology, cleaner fuels, and perhaps even the closing of some of the older coal-fired electrical utilities in the Midwest.

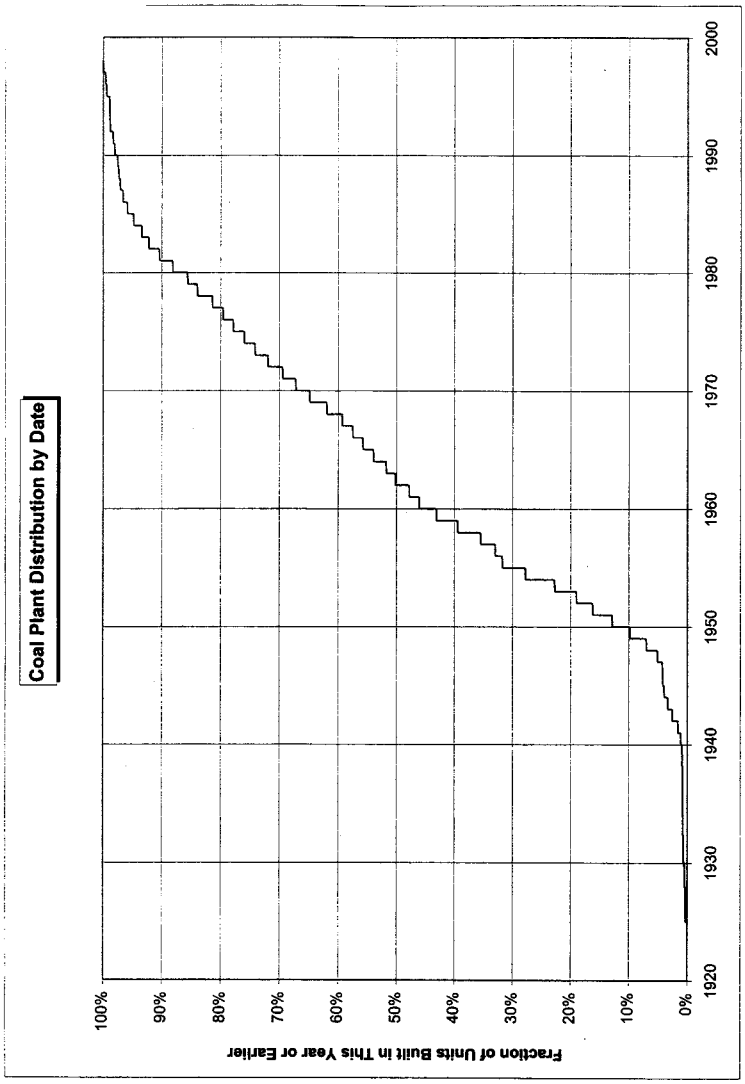
In any case, the industries most affected by the new rules — the utilities and the automobile companies — are no happier with this program than with the Administration's previous efforts to clamp down on air pollution. Those earlier actions were aimed at protecting public health. Yesterday's action is designed solely to improve visibility. But the pollutants, the culprits and the remedies are the same. So is the goal — a nation with cleaner air.

ATTACHMENT 3

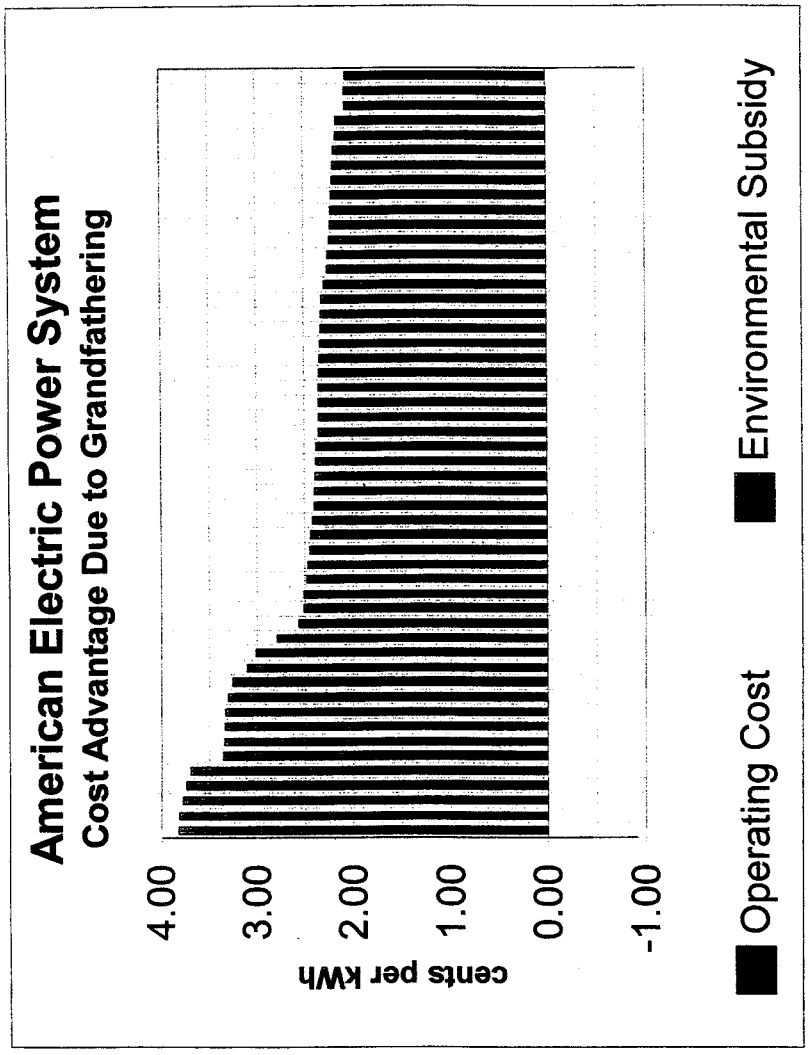


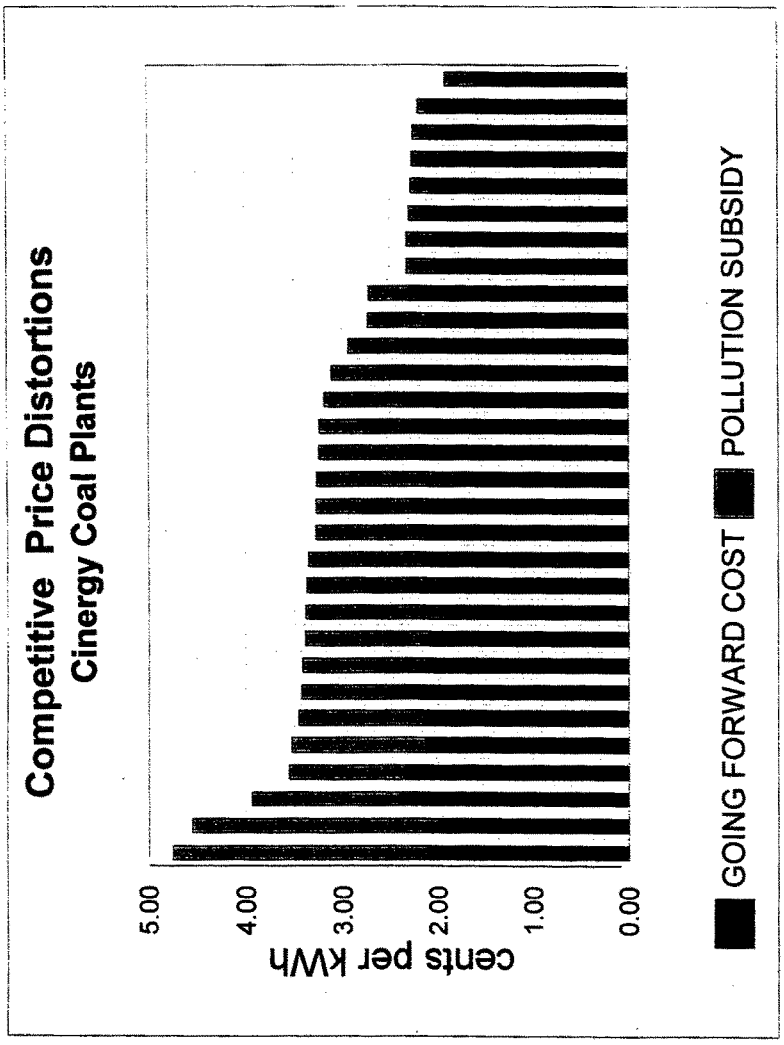
Coalition for Gas-Based Environmental Solutions

ATTACHMENT 4



ATTACHMENT 5




Competitive Price Distortions
Cinergy Coal Plants
cents per kWh
5.00
4.00
3.00
2.00
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0.00
GOING FORWARD COST
POLLUTION SUBSIDY

March 18, 1997

William J. Clinton
President of the United States

Dear President Clinton:

As you know, the competitive restructuring of the nation's electric power industry is one of the most important issues that will be discussed by the 105th Congress. Recent press reports have indicated that the Clinton/Gore Administration will be developing and unveiling its own proposed electric industry restructuring legislation in the coming weeks.

The undersigned parties strongly urge the Administration to create, as part of its legislative proposal, appropriate market mechanisms to insure that America's emerging electric marketplace will be both competitive and environmentally sustainable. The legislation should address two issues: first, it should remedy the competitive distortions and environmental damage resulting from the application of unequal and inadequate air pollution standards to older power plants. Second, it should include market-based mechanisms to develop zero emissions and renewable generating technologies and energy efficiency.

Without appropriate market mechanisms, national progress on clean air will be immeasurably slowed – making achievement of the Administration's new proposed health standards (as well as existing ones) a much more difficult and complex undertaking. And without elimination of the gross disparities in emissions criteria between different generators, older and dirtier plants will enjoy significant market advantage and new, cleaner technologies will face significant barriers to market entry.

This letter summarizes mechanisms for promoting a competitively neutral marketplace while achieving the nation's air quality objectives:

- **Competitively neutral, environmentally protective emission reduction requirements.** In tandem with a policy for elimination of biased emissions standards, the Administration should propose specific regional and national emissions caps to be phased in as the industry restructures. These caps must provide specific numerical emissions reductions of nitrogen oxides and sulfur dioxides from the nation's older, dirtier generating plants. The Administration bill should also provide for similar mechanisms to address other pollutants of concern. The best available scientific information indicates that current power sector emissions of nitrogen oxides and sulfur dioxide from older, dirtier generating plants must be substantially reduced in order to protect human health and the environment.

These health and environmental concerns go well beyond the increment of pollution that may occur from competitive restructuring; the existing base of power plant emissions is causing unacceptable damage to our children's lungs and the land, air and water around us. **Establishment of emission caps -- reflecting achievement by the industry as a whole of standards met routinely by post-1977 plants -- will ensure continued environmental progress as well as a fair, functioning marketplace unbiased against newer, cleaner market participants.**

- **Elimination of disparities in emission requirements among competitors.** One of the major problems slowing power sector clean-up in the last 25 years is the patchwork of unequal environmental requirements applying to power plants. For example, pre-1977 plants are permitted to emit at several times the rate of newer plants, due to the "old source" exemption. The theory of that exemption at the time was, in significant part, that older plants would retire within a decade or two, avoiding the need for them to clean up to "new source" standards. For a variety of reasons, however, those older plants have largely remained in service, **with grandfathered emission levels which are typically four to ten times higher than standards met by post-1977 plants**. This exemption, combined with regional disparities in emissions control requirements, not only fouls the air unnecessarily; it also frustrates the creation of a fair and competitive marketplace by tilting the playing field against new, cleaner market entrants. The "old source" exemption, for example, often accounts for between 75-100% of the cost margin between older, dirty units and newer, cleaner units. In order to have a truly competitive power marketplace, market participants must compete on the basis of operating efficiency, innovation and performance rather than on the basis of historic emissions rates based on plant age or location. **Accordingly, the undersigned urge the Administration to propose, as part of any restructuring initiative, a competitively neutral emissions allocation system which recognizes and rewards higher plant operating efficiencies and which removes the historic grandfathering of high emissions rates for pre-1977 plants.**

- **Developing a clean power strategy.** The legacy of a competitive power industry must include reducing the environmental impacts of our use of energy and natural resources. True competition, including the elimination of competition-distorting emissions standards described above, will lead to much technological innovation and more efficient use of resources. However, it is still appropriate and important to pursue additional policies that encourage the continued development of clean and zero emissions technology over time, including energy efficiency. Market-based approaches, which minimize transaction costs and allow for transparent and easily evaluated competitive impacts, can enhance fuel diversity, national security and provide environmental quality benefits, including greenhouse gas mitigation. **Appropriate mechanisms to achieve these goals could include well-designed renewable generation portfolio requirements, and the development and**

deployment of energy efficiency and clean generating technologies with funding from broad-based, competitively neutral charges to power consumers.

In sum, restructuring of the nation's electric power industry will not achieve its economic and structural goals without eliminating the competitive roadblocks built into the nation's air emissions regime. Without this reform, and a companion clean power strategy, the nation will not meet its environmental goals either. The Clinton/Gore Administration's commitment to these policies in its electric restructuring legislation may well be its most valuable and lasting legacy for both competition and the environment. We pledge our support and assistance to the Administration in advancing these policies in the coming months.

Sincerely,

David G. Hawkins
Senior Attorney
Natural Resources Defense Council

Jean G. Hopkins
Vice President, Environmental Affairs
U.S. Generating Company

Paul Hansen, Executive Director
Izaak Walton League of America

Ellen Roy, Vice President
Intercontinental Energy Corporation

Charlie Higley
Senior Policy Analyst
Public Citizen

John J. Stauffacher
Director, Public Affairs
Destec Energy, Inc.

Howard Learner, Executive Director
Environmental Law and Policy
Center of the Midwest

Ross D. Ain
Senior Vice President
Cogen Technologies

Jeffrey M. Gleason
Director, Energy Project
Southern Environmental Law
Center

Freddi Greenberg
Midwest Independent Power Suppliers
Coordination Group
(Representing ten member companies)

Lisa Hong
Energy Program Manager
Ohio Environmental Council

Jan Smutny-Jones, Executive Director
Independent Energy Producers
of California
(Representing forty five
member companies)

David Wooley, Executive Director
Pace University Energy Project

David Marshall, Staff Attorney
Conservation Law Foundation

David Dempsey
Policy Director
Michigan Environmental
Council

Conrad G. Schneider, Director
Clean Air Campaign
Natural Resources Council of
Maine

Kevin Knobloch, Director
Conservation Programs
Appalachian Mountain Club

Kevin Snape, Executive Director
Clean Air Conservancy (Ohio)

Joseph Minott, Executive Director
Clean Air Council
(Pennsylvania)

Howard Ris, Executive Director
Union of Concerned Scientists

Bernard C. Melweski, Legislative
Director
The Adirondack Council

Terry R. Black, Director
Project for Sustainable
FERC Energy Policy

Carol E. Murphy, Executive Director
Independent Power Producers
of New York
(Representing eighty member companies)

Neal B. Costello
Executive Director
Competitive Power Coalition of New
England, Inc.
(Representing six member companies)

Adam Kaufman, Executive Director
Independent Energy Producers
of New Jersey
(Representing twelve member companies)

Julie G. Rowe, Executive Director
Independent Energy Producers of Maine
(Representing twelve member companies)

B. Kent Burton
Ogden Energy, Inc.

Lawrence W. Plitch
Vice President and General Counsel
Wheelabrator Technologies, Inc.

Douglas Barba
Senior Vice President and
General Manager
Catamount Energy Corporation

Michael Polsky, President
Polsky Energy Corporation

John White, Executive Director
Center for Energy Efficiency and
Renewable Technologies

Randall Swisher, Executive Director
American Wind Energy Association

Gail Kamaras, Director
Energy Advocacy program
Legal Environmental Assistance
Foundation (Florida)

Marie A. Curtis, Executive Director
New Jersey Environmental Lobby

Nancy F. Parks, Chair
Sierra Club
Clean Air Committee
Pennsylvania Chapter

Michael Noble, Executive Director
Minnesotans for an Energy Efficient
Economy

Curtis Spalding, Executive Director
Save the Bay (Rhode Island)

Peter Iwanowicz
Energy Project Director
Environmental Advocates (New York)

Eric Blank
Energy Project Director
Land and Water Fund of
the Rockies

Thomas C. Kiernan, President
Audubon Society of New Hampshire

Gary L. Groesch, Executive Director
Alliance for Affordable Energy
(Louisiana)

Michael Vickerman, Executive Director
Renew Wisconsin

Marc H. Lavietes, M.D.
President
New Jersey Chapter
Physicians for Social Responsibilty

cc:
Hon. Albert Gore, Jr., Vice President of
the United States
Hon. Federico Pena, Secretary,
Department of Energy
Hon. Carol Browner, Administrator
Environmental Protection Agency
Hon. Mary Nichols, Assistant
Administrator for Air and Radiation,
Environmental Protection Agency
Hon. Kathleen McGinty, Chair
Council on Environmental Quality
Hon. Gene Sperling, Chairman
National Economic Council

05/18/1999 10:47 617-747-4397 FAX NO. PAGE 02
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3

CAMPAIGN TO CLEAN UP POLLUTING POWER PLANTS

WHEREAS: Air pollution kills at least 1,000 people each year in Massachusetts. Hundreds of thousands of people with respiratory conditions, such as asthma and heard conditions are made sicker by smog and soot.

WHEREAS: Coal and oil burning power plants are the largest stationary sources of air pollution in Massachusetts. The oldest power plants are the biggest culprits; plants built before 1977 are not required to meet current standards for power plant emissions. 5 power plants in Massachusetts are meeting these standards and are responsible for nearly 90% of power plants pollution in Massachusetts. Cleaning up these plants would be like taking nearly 1 million cars off the road.

THEREFORE: If elected, I pledge to support requirements for clean up the "Filthy Five" to modern clean air standards.

NAME Argeo Paul Cellucci

ADDRESS The Cellucci Committee, 55 Union Street, Boston, MA 02108

PHONE 617-742-1998 FAX 617-367-2374

E-MAIL

SIGNATURE Argeo Paul Cellucci

Please mail this form to **MASSPIRG** attn: Scott Kozar, 29 Temple Place, Boston MA 02111
Please fax this for to: **MASSPIRG** attn: Scott Kozar, (617) 292-8057

ATTACHMENT 7

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

ARGEO PAUL CELLUCCI
Governor

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

FOR IMMEDIATE RELEASE
October 1, 1998

CONTACT: Rick Lombardi
(617) 292-5845

Statement of DEP Commissioner David B. Struhs
in response to MassPIRG petition

In response to MassPIRG's request, Governor Cellucci has directed DEP to begin writing regulations to achieve additional reductions of between 50 and 75 percent in smog and acid rain-causing pollutants from power plants. The Governor agrees that these reductions should be achieved by 2003, as MassPIRG has recommended.

The Governor has also asked us to incorporate MassPIRG's proposal into a draft regulatory package that will be made available for public review and comment by the end of the year.

There are obviously many technical issues that will need to be resolved, and we look forward to an inclusive public process that will help us find the best means of achieving these shared goals.

THE MASSACHUSETTS CAMPAIGN TO CLEAN UP POLLUTING POWER PLANTS

PRESS RELEASE

For Immediate Release
October 1, 1998

Contact Persons:
Rob Sargent, MASSPIRG 617.292-4800
Cindy Luppi, CWA, 617.423.4661

Cellucci Stands Up for Clean Air

In the wake of a sustained grassroots campaign by a broad coalition of over 100 environmental, public health, community and consumer groups, today Governor Cellucci signed a pledge to clean up the state's filthiest five power plants. The pledge commits the Governor to tighten the state's clean air standards, thereby closing a twenty year old loophole on the Federal Clean Air Act that exempted older plants from modern clean air standards.

"Paul Cellucci has heard the call of citizens statewide, and responded with a bold step," said MASSPIRG Energy Program Director, Rob Sargent. "If Governor Cellucci follows through on this commitment to clean up the state's dirtiest power plants, he will have hit a home run for clean air that Sammy Sosa and Mark McGwire would be proud of."

"This is an incredible victory for the local community groups who came together around concerns of local health impacts from plant pollution," said Clean Water Action Organizing Director, Cindy Luppi. "Our top priority has been to help the communities living in the shadows of the Filthy Five achieve some relief from this burden. It appears as though that relief may be in sight."

"We're glad that the Governor is hearing our concerns about the health of our local community, especially the elevated asthma rates of our children," said Dave Dionne, Westport Selectman and member of the Campaign to Clean Up Brayton Point.

"The citizens of the Commonwealth can now breathe a little easier, literally," noted Lynn Nadeau Co-Chair the of Salem Power Plant Health Link. "It is great to know that, by raising awareness and speaking out on this issue, we have made a difference on this critical public health matter."

"We are very pleased in the progress that has been made today for all the citizens of the Commonwealth," said Rosemary Kverek, a leader in the effort to clean up the Mystic Plant in Everett. "We all deserve clean air, particularly our children."

DATE: May 17, 1999 TIME: 19:52:59 PAGE: 1
TO: A. COHEN From: KING PUBLISHING

The Energy Daily

627 National Press Building • Washington, D.C. 20045 • (202) 638-4260 • Fax: (202) 662-9740

Tuesday, May 18, 1999 ED Volume 27, Number 94

Bush Burnishes Green Credentials In Texas Restructuring Debate

Under pressure from environmentalists, Texas Gov. and presidential hopeful George Bush gave his endorsement last week to electricity restructuring legislation that includes provisions to cap nitrogen oxides and sulfur dioxide emissions from older power plants.

But the move isn't enough to satisfy environmentalist critics, who want all the state's industrial polluters to meet tougher air quality standards.

Bush's support for the emission caps is seen as a sign that he is aware that environmental issues will be a critical component of the 2000 presidential campaign—and that if he wins the GOP nomination and faces likely Democratic contender Vice President

BY CHRIS HOLLY

Al Gore, he better get his own green credentials in order.

Bush has taken a lot of heat inside and outside the Lone Star State recently for resisting proposals to eliminate an exemption from tighter air pollution standards enjoyed by hundreds of industrial facilities and 78 power plants in Texas under a 1971 state air quality law.

The governor has tried to win support for voluntary reductions from the exempted facilities, but consumer and environmental organizations—joined recently by the state's editorial boards—have urged Bush instead to eliminate the exemptions, a move that environmentalists say would cut nearly 700,000 tons of smog- and soot-producing emissions annually.

A coalition of 13 state and national green groups last week sent a letter to Bush urging him to "take immediate and decisive action" to clean up the Texas plants. The federal Clean Air Act also contains an exemption from modern air quality standards for older facilities.

"While you cannot change federal law, you can provide state and national leadership by proposing and helping enact state legislation that firmly and unequivocally requires power plants (as well as other industrial facilities) benefitting from the Texas emissions loophole to meet modern state power plant emission standards and performance levels," the letter states.

"We believe that, as you seek to establish yourself as a national leader, your environmental credibility will

(Continued on page 4)

Citizens For State Power Unplugging Federal Deregulation

BY HOWARD BUSKIRK

With electricity deregulation legislation seemingly stalled in Congress for now, Citizens for State Power is all but declaring victory in its ongoing efforts to defeat a federal bill in favor of a state-by-state approach to deregulation.

"Federal energy deregulation has been a real bust so far," argued Stephen Merrill, national chairman of the conservative group that favors state—but not broad-gauge federal—restructuring action.

"It has generated far less enthusiasm and far less support than was intended," added Merrill, who is also a two-term former governor of New Hampshire. "The average citizen isn't interested....We've asked the average congressman for and against our positions, 'Are you getting letters?' Nobody is getting letters.

"It doesn't look [like the issue] is really ripe yet," he told *The Energy Daily* in an interview

(Continued on next page)

DOE's Accelerated Cleanup Effort Hitting Bumps—GAO

BY GEORGE LOBSENZ

A new General Accounting Office analysis is raising fresh questions about the Energy Department's accelerated cleanup effort, saying some sites appear unlikely to meet 2006 completion deadlines and no apparent progress has been made in making up a massive $4.3 billion underfunding problem.

The report, done for House Budget Committee Chairman John Kasich (R-Ohio), also found that cost estimates in DOE's most recent report to Congress on accelerated cleanup—the *Paths to Closure* report—were based on less than reliable data provided by DOE field offices.

GAO said DOE also omitted some long-term monitoring costs that should have been included.

As a result, the GAO auditors suggested, total DOE-wide cleanup costs could run above the $147 billion estimate made in the *Paths to Closure* report.

And, GAO noted, the data reliability problems underlying the cleanup estimates were serious enough to prompt DOE's inspector general to issue a qualified opinion on the department's financial statement for fiscal year 1998.

Having made those criticisms, the GAO study said the accelerated cleanup program—launched in 1997—did provide important benefits in that DOE for the first time set completion goals

(Continued on page 2)

Tejas Sells Transok Gas Unit

Tejas Energy LLC, a subsidiary of Shell Oil Company, announced Monday that it will sell its Transok LLC affiliate to Enogex Inc., a subsidiary of OGE Energy Corp., for $700 million.

The sale price includes Enogex's assumption of $173 million of long-term debt.

Transok, based in Tulsa, is a gatherer, processor and transporter of natural gas in Oklahoma. The company operates over 5,000 miles of pipelines, with a capacity of about 2.5 billion cubic feet per day, and nine gas processing and treating plants.

"The sale of Transok enables us to concentrate on our core natural gas transportation, storage and NGL assets in the Gulf Coast region," said Walter van de Vijver, president and CEO of Shell Exploration & Production Company and head of Shell's U.S. Downstream Gas & Power business.

Integration of the Transok system with the Enogex network of pipelines will bring the total to about 10,000 miles of pipe with the capacity to transport more than 3 billion cubic feet of gas per day to a number of end-users and pipelines. Combined natural gas storage capacity will be nearly 23 billion cubic feet. Together, the companies have interests in 15 gas processing plants.

"Oklahoma is the third-leading gas producing state in the country, and the combined Enogex/Transok system will be one of the state's major gas gathering and transportation systems," said Steven Moore, chairman, president, and CEO of OGE Energy.

Enogex is a non-regulated natural gas gathering, processing, transportation, production, and energy services company with principal pipeline operations in Oklahoma, Arkansas, and Texas. OGE Energy also is the parent of Oklahoma Gas and Electric Company, a regulated electric utility with nearly 700,000 customers in Oklahoma and western Arkansas.

Green Credentials In Texas... *(From one)*

be judged in significant part by your willingness to take action on this issue in Texas. We ask that you act now and show leadership at home to begin to clean the air of this significant public health and environmental threat by ending this special, and deadly, environmental exemption for power plants and other industrial air pollution sources."

A spokeswoman for Bush said Monday his office had not yet received the May 13 letter, but noted the governor's "full support" for the provision in the restructuring bill that would require the older power plants to cut NOx by 50 percent and SO2 by 25 percent below 1997 levels by 2003.

Peter Altman, director of the Sustainable Energy and Economic Development Coalition, said state environmental and consumer groups are pleased that Bush endorses the power plant cleanup, but are eager to see similar enthusiasm from the governor for cleaning up the remaining grandfathered facilities, particularly its oil refineries.

"On one hand I want to praise the governor for finally seeing the light and making sense," Altman told *The Energy Daily*. "At the same time I have to point out that this is a guy that figured out that the parade wasn't going down his street, and has run outside to catch up with the parade and get in the front of the line."

Bush spokeswoman Linda Edwards noted that the governor is working hard to enact legislation that would offer incentives to exempted facilities that voluntarily reduce their emissions. "Already 50 companies have pledged to reduce their emissions by more than 100,000 tons, and that is before the bill has been enacted," Edwards said. "Gov. Bush sees this as evidence that the voluntary approach is working."

Armond Cohen, director of the Clean Air Task Force, a Cambridge, Mass.-based environmental organization that signed the May 13 letter, said Bush's presidential ambitions will force the governor to accommodate environmentalist concerns, especially if he faces Gore—one of the green movement's champions—in the election.

"Who knows what will happen in the primaries, but the bottom line is if anyone is going to enter the national stage, they are going to have deal with this issue on a national level," Cohen said.

Bush would not be the first governor to address pollution from older plants. In Massachusetts, Republican Gov. Argeo Paul Cellucci has fulfilled a campaign promise by ordering the state's Department of Environmental Protection to undertake a rulemaking requiring exempted plants to meet the same standards as new plants. The Illinois legislature is exploring the issue, as are Connecticut lawmakers.

Texas Utilities Becomes TXU

Texas Utilities Company is the latest energy company to change its name, announcing Friday that from now on the company will be called TXU.

Dallas-based Texas Utilities said in a statement the name change reflects the changing nature of the company.

"We are no longer a traditional utility company with all our business focused entirely on Texas," said Erle Nye, chairman and chief executive. "TXU has repositioned itself as a multinational, integrated energy company that is diverse geographically, operationally and financially. But now we need an identity that reflects our new position and strategy."

All of the company's subsidiaries are changing their names as well to reflect the new name. TU Electric/Lone Star Gas, for example, is to be renamed TXU Electric & Gas. TXU is also the company's stock symbol.

Cavanaugh Named CP&L Chairman

Carolina Power & Light President and Chief Executive Officer Bill Cavanaugh last week was named chairman of the utility's board of directors, succeeding Sherwood Smith Jr., who had held the chairman's position since 1980.

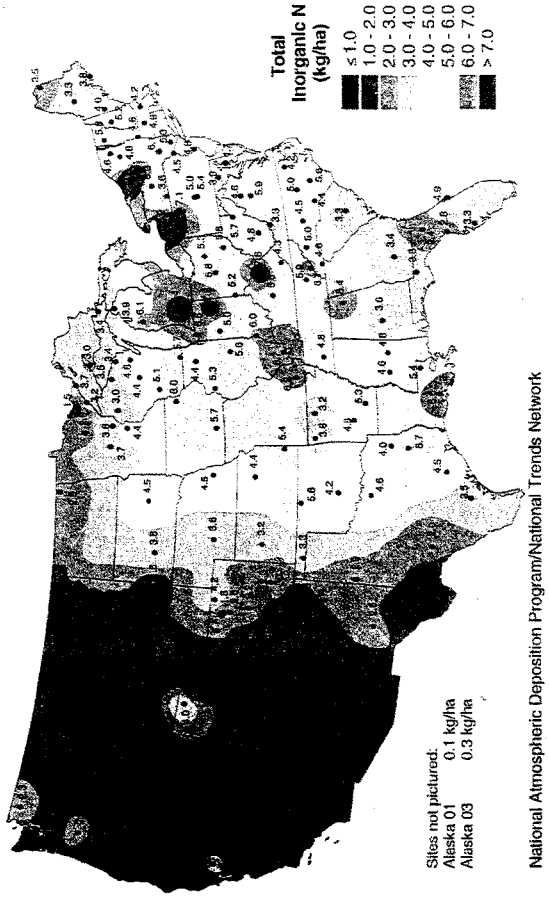
Cavanaugh, who came to the Raleigh, N.C.-based utility in 1992, has been a director since 1993 and CEO since 1996.

Smith, who has been on the board of directors since 1971, will continue to serve as a director.

CP&L operates 16 power plants and a system of 60,000 miles of power lines in providing electricity and energy services to 1.2 million customers in the Carolinas.

ATTACHMENT 8

National Atmospheric Deposition Program
1997 Wet Deposition



Mr. BARTON. Thank you Mr. Cohen.
We would now like to hear from Mr. Agathen.

STATEMENT OF PAUL AGATHEN

Mr. AGATHEN. Thank you, Mr. Chairman and members of the committee. This has really been a very productive hearing so far, and having said that, I hope I may be getting 2 more extra minutes to my testimony.

My name is Paul Agathen. I am a senior vice president for Energy Supply Services for Ameren Corporation. We supply electricity to 1.5 million customers in the States of Illinois and Missouri. Today I am here representing the Energy and Environment Coalition, or EEC, a group of 12 of the Nation's largest electric utility and fuel providers. We are working constructively with Congress, the executive branch, and other stakeholders on the environmental issues that are expected to rise in the consideration of Federal electricity restructuring legislation.

I want to emphasize that the EEC's membership includes several companies that are seeking prompt enactment of Federal restructuring legislation as well as others that prefer a more deliberate route. Thus, while our members may not agree on the scope or pace of Federal legislation, they unanimously agree that Federal restructuring legislation should not become a vehicle for environmental initiatives.

The EEC believes that the transition to competitive electricity markets can and must be accomplished without compromising public health or the environment. The correct question for Congress, however, is will retail competition in and of itself result in degrading air quality. We recognize this as a serious inquiry that deserves serious analysis. In fact, two government agencies have undertaken exhaustive studies and concluded that the impact on air quality would likely be negligible; in fact, possibly positive.

In the absence of air quality impacts, electric restructuring should not be linked to environmental proposals. Such proposals should and are being addressed in more appropriate forums. Making this vicious will only complicate an already complex debate.

We don't agree that the Clean Air Act needs to be amended, but more importantly we believe in the notion of statutory integrity, and proposals for new regulation of criteria pollutants should be considered within the context of the Clean Air Act, not restructuring. Further, consideration of any CO_2 controls in restructuring legislation is premature at this time and inappropriate.

Ongoing administration dialogs and EPA regulatory initiatives continue to offer the prospect of resolving emissions issues outside the legislative process. It is clear that EPA has ample evidence to address air quality issues outside the context of restructuring.

Some suggest that Midwestern and Southeastern power plants are somehow grandfathered, exempted, or uncontrolled. Not true. Starting with a 1970 act, the record shows that Congress did not exempt any sources from emission controls. Existing sources were required to make whatever reductions were necessary, including closing facilities, to obtain air quality standards. New sources were required to install the best available to avoid deterioration in air quality. There were and are no specific deals for utilities. In fact,

Title IV of the 1990 amendments to the Clean Air Act required all coal-fired electric power plants to make significant reductions in sulphur dioxide and nitrogen oxide.

Electric utilities now contribute less than 17 percent of all ozone precursor emissions. Further cuts in NO_X emissions already required under the Clean Air Act amendments will reduce that contribution even more.

We recognize our role and our future obligations in achieving clean air. We are proud of our record to date. In fact, EPA found that utility emissions of sulphur dioxide in 1995 had already been reduced to 39 percent below the level allowed by the Clean Air Act. Ameren UE, my employer, is an example of how significant emission reductions from coal-fired units have been achieved through existing programs. Since the late 1970's, our SO_2 emissions have dropped nearly 70 percent, and our NO_X emissions rate has dropped over 50 percent in the last 7 years.

With regard to carbon dioxide, utilities have done more than any other industry sectors anywhere in the world to reduce emissions. This is the result of our voluntary partnership with DOE called the Climate Challenge Program. According to DOE, our industry expects to control more than 170 million metric tons of greenhouse gas emissions by the year 2000.

The primary purpose for restructuring is to achieve market pricing of electricity and to create economic benefits for all customers. The best available analysis shows no likely negative air quality impact. Even so, some want to use this as an opportunity to mandate even additional controls on the electric utility industry.

Perhaps the best way to place in perspective some of the ideas that you will hear today is to note that the administration has specifically considered and rejected this kind of new multipollutant regulatory program in its restructuring legislation. As EPA administrator Carol Browner has said, responding to inquiries about including carbon controls in the administration's bill, this is the wrong time and the wrong place for such linkages. Thank you.

[The prepared statement of Paul Agathen follows:]

PREPARED STATEMENT OF PAUL AGATHEN, SENIOR VICE PRESIDENT, ENERGY SUPPLY SERVICES, AMEREN CORPORATION ON BEHALF OF THE ENERGY AND ENVIRONMENT COALITION

Mr. Chairman, my name is Paul Agathen—I am the Senior Vice President for Energy Supply Services for Ameren Corporation. We supply electricity to 1.5 million customers in Missouri and Illinois.

I am appearing before the Subcommittee today on behalf of The Energy and Environment Coalition (EEC) a group of twelve of the nation's largest electric utilities and fuel providers that are working constructively with Congress, the Executive Branch, and other stakeholders on the environmental issues that are expected to be raised during the consideration of federal electricity restructuring legislation.

At the outset, I want to emphasize that the EEC's membership includes several companies that are seeking the prompt enactment of federal legislation, as well as companies preferring a more deliberate route. Thus, while EEC members may not all agree on the shape or pace of federal legislation, they unanimously agree that federal restructuring legislation should not become a vehicle of opportunity for those seeking a back door re-write of federal Clean Air Act requirements.

The members of the EEC at this time are: Allegheny Power; Ameren Corporation; American Electric Power; Cinergy; Consumers Energy; Detroit Edison; Illinois Power; James River Coal Company; Kansas City Power and Light; MidAmerican Energy Company; Peabody Holding Company; and Southern Company.

Let me also emphasize that the EEC believes that any transition to competitive electricity markets can and must be accomplished without compromising public health or the environment. The correct question for Congress to consider, therefore is "Will retail competition, in and of itself, result in degrading air quality?" This is a serious issue; it deserves serious analysis. Two government Agencies have undertaken exhaustive studies which are relevant:

1) The Federal Energy Regulatory Commission (FERC), in evaluating the environmental impact of its open access rule (Order No. 888) deregulating the wholesale electricity market, concluded that the impact on air quality—while related to future fuel pricing—would likely be negligible.

2) The U.S. Department of Energy (DOE), in its assessment of emissions trends associated with retail competition has reached much the same conclusion. Quite apart from the Administration's aggressive Renewable Portfolio Standard (RPS) and Public Benefits Fund (PBF) mandates, the DOE work cites non-regulatory market forces such as the increased incentive for heat rate improvement and the projected growth of green power as lowering emissions in a competitive scenario.

Given the likely absence of air quality impacts, utility restructuring should not be used as a vehicle to re-write the Clean Air Act or to prematurely consider carbon reductions related to global climate change. Such proposals will further complicate an already difficult debate and should be properly considered within the context of the Clean Air Act, or in other appropriate forums.

Some proponents of a Clean Air Environmental Title of Restructuring legislation argue that this legislation ought to be used for the following purposes:

- Impose nationwide caps on all fossil fuel power plant emissions reducing NO_X and SO_2 emissions far beyond the requirements of the Clean Air Act Amendments of 1990.
- Achieve power sector CO_2 reductions of a scope similar to those required by the Kyoto Protocol.
- Mandate sharp reductions of mercury emissions from coal-fired power plants.

In fact, some Members in the past have suggested that a "moratorium" be placed on retail competition until the Clean Air Act is amended to "significantly reduce" utility emissions Of CO_2, Mercury, NO_X, and SO_2.

While we do not agree that now is the time to amend the Clean Air Act, we do at least share the notion of "statutory integrity"; that is that these proposals for new regulation of criteria pollutants (NO_X, NO_X) and air toxics (mercury) should be properly considered within the context of the Clean Air Act—not restructuring legislation. Consideration of any CO_2 control program within restructuring legislation is premature and inappropriate.

Having said that, I want to emphasize that ongoing administrative dialogues and EPA regulatory initiatives continue to offer the prospect of resolving emissions issues outside the legislative process. For example, most members of the EEC are actively involved in discussions with EPA on reform of the Clean Air Act's New Source Review (NSR) procedures with an eye toward achieving certainty for the industry and long term emissions reductions sought by EPA. Other examples of the EPA initiative to address related issues include its 23 state regional ozone control program (NO_X SIP Call), the recently proposed Regional Haze regulations, and its analysis for Congress regarding utility Mercury emissions. EPA has ample legal authority to regulate all significant pollutants from utility boilers, including any that might arise from utility restructuring.

THE GRANDFATHERING ARGUMENT AND THE RECORD ON EMISSIONS REDUCTIONS

It has become popular among some environmentalists and high cost energy producers to refer to Midwestern or Southeastern utility plants as "grandfathered," "exempted" or "uncontrolled."

The historical record, starting with the 1970 Act, shows that Congress has not singled out utilities for favorable treatment. On the contrary, Congress did not exempt any sources from emission controls, but did differentiate between existing sources and new sources. Existing sources were required to make whatever level of emission reductions were necessary, including facility closure, to attain national ambient air quality standards. New sources were required to install the best available control technology to guard against deterioration in air quality. There was no special deal for utilities under the Act. They were treated just like any other industrial sources (e.g., chemical manufacturer, petroleum refiner, steel maker, automobile assembly, etc.) Subsequently, Title IV of the 1990 amendments to the Clean Air Act (CAA) required all coal-fired power plants to make reductions in sulfur dioxide emissions (50% below 1985-87 levels) and nitrogen oxide emissions (approximately 40% below existing levels) under the acid rain program.

Electric utilities now contribute less than 17% of all ozone precursor emissions while the transportation sector contributes 41% and the industrial sector about 37%. Further cuts in NO_X emissions from utilities mandated by the Clean Air Act Amendments (CAA) will reduce that contribution to 11% of all ozone precursor emissions by 2003. Power plants contribute roughly one-third of U.S. CO_2 emissions.

We recognize our role and our future obligations in achieving clean air; we are also proud of our record to date. According to data collected by EPA, the utility industry achieved 100% compliance with the 1995 SO_2 reductions mandate. In fact, EPA found that utility emissions had been reduced to 39% below the level allowed by the Clean Air Act. Ameren UE, one of our operating companies, is an example of how significant emission reductions from coal-fired units have been achieved through existing legislative and regulatory programs. SO_2 emissions have dropped by nearly 70% from our coal-fired units since the late 1970s. The NO_X emissions rate on our system has dropped over 50% in the last 7 years.

With respect to carbon dioxide (CO_2), utilities have done more than other sector of industry anywhere in the world to achieve emissions reductions. The Climate Challenge Program, a voluntary partnership with the Department of Energy (DOE), involves the participation of over 600 utilities representing more than 60% of electric power generation and CO_2 emissions. According to Department of Energy projections, our industry expects to control more than 170 million metric tons of greenhouse gas emissions by the year 2000. The Climate Challenge Program is the world's largest and most successful voluntary environmental initiative.

CONCLUSION

Maintaining healthy air quality has been and will continue to be an important national objective. It is a goal that EEC members embrace and have been responsibly addressing for several decades.

The primary purpose for restructuring the electric utility industry is to achieve market pricing of electricity, creating economic benefits for all customer classes. The best available analysis shows no likely negative air quality impact. Still, some stakeholders want to mandate additional controls on the electric utility industry as a condition for moving forward with retail competition.

Perhaps the best way to place in perspective the ideas put forward today by the Clean Air Task Force and others is to note that the Clinton Administration has specifically considered and rejected as part of its restructuring legislation, this kind of new multi-pollutant regulatory program during each of the last two years. These decisions were recently criticized by environmental groups in a sharply worded letter to Vice President Gore, but as EPA Administrator Carol Browner has said in responding to inquiries about the appropriateness of carbon controls in the Administration bill, "this is the wrong time and the wrong place" for such linkages.

Mr. BARTON. Thank you.

We now would like to welcome Mr. Codey.

I asked Mr. Pallone if he wanted to introduce you, and he said that he already did that. So you are recognized for 5 minutes.

STATEMENT OF LAWRENCE R. CODEY

Mr. CODEY. Thank you, and thank the Chair and the committee for the opportunity to testify here today.

A little bit about PSE&G. It is the main subsidiary of Public Service Enterprise Group. As a utility we serve approximately 2 million customers, 70 percent of the State of New Jersey, about 5 million in population. We are also the largest gas LDC on the east coast and about the third largest combined company in the country. Our sister subsidiaries are involved in the generation and distribution of energy in China, in India and Argentina. We own distribution companies in Chile, Peru, as well as Brazil. In addition, we operate about 15,000 megawatts worldwide; 2,000 megawatts of that are coal in New Jersey; 1,000 megawatts in New Jersey and about 1,000 in western Pennsylvania. So we are also a coal utility.

I guess I am here really to disagree with my colleague to the right, because I think it is very appropriate and, in fact, indispen-

sable that we consider environmental issues as we look to total restructuring of the environment.

I think I would like to just indicate, as Congressman Pallone has indicated, New Jersey is on the eve of restructuring. We have legislation passed. We have a commission order. All 2 million of our customers will have choice. As of August, power will flow in a completely deregulated market to industrial, commercial, and residential customers as of August 1 of this year.

How did we get there? Back about the early 1990's, given our experience with natural gas, we as a company recognized that, in fact, electricity would be deregulated and should be deregulated for our customer base. We also recognized almost immediately that there was a conundrum, a public policy conundrum, which would pit low-cost energy in a free market against environmental rules.

Unlike air and unlike kilowatt hours that flow across State lines, the problem with the regulatory patchwork of environmental rules was that they stopped at State lines. That was a fundamental inconsistency with the creation of a level playing field in terms of a competitive environment. Dirtier power plants were cheaper power plants, and a free market would have the market choose those cheaper power plants. In fact, what would happen would be electricity would become dirt cheap.

We did not believe that that was a good public policy way to go; that we had to establish a level playing field where the ability to pollute was not a competitive advantage. The only way, we believed, to do that was to start raising this public policy issue, supporting deregulation, and moving forward very aggressively. We wanted to create an efficient marketplace, and we couldn't do that unless we linked environmental and energy policy together. We would not get efficiency. We would get subsidies because of the State lines where environmental rules change. We would also get a backtrack of all of the progress that we made in terms of cleaning up the air. In fact, dirtier power plants would produce more and put more in the air, and it tends to go west to east and south to north. That is a particular problem for the Northeast, but frankly it is a problem for Missouri as to what happens in Arkansas and Oklahoma and Texas. Transport is an issue.

I believe it is incomprehensible, recognizing how much the electric industry is involved with our air in terms of—you have heard the statistic 60 percent of the SO_2, 30 percent of the CO_2, 25 percent of the NO_X—that we think about restructuring this industry without addressing the environmental issue at the same time.

I think the technology is there. We have proven it. In New Jersey we used to be, a few years back, 1992, 27 percent of the NO_X in New Jersey. We are now 5 percent. Using technology, using fuel switching, et cetera, et cetera, we have been able to make that reduction. We just agreed with the Whitman administration to reduce that to 90 percent of what we used to be.

Rates are going down through restructuring. In New Jersey our rates with this bill that was just introduced are going down 20 percent; 14 percent on our account, 6 percent in taxes. That is $2 billion being put in the State of New Jersey in terms of restructuring over the next 4 years.

Now is the time to take some of those savings and to invest in clean air, and still have net reductions. It also is a time because we are dealing with comprehensive issues of restructuring. PURPA has to be reformed. PUHCA has to be reformed. We need to restructure. We also need to have the environmental issue put on the table where all of the parties can come to a comprehensive solution and form a consensus as to how we are going to deal with energy and environmental policy in the next century.

What should we do. Fuel neutral uniform standards, output based standards as you heard about before, that is the way to go. Robust trading mechanisms, we should encourage early reductions and we should encourage new technologies of renewables. And it hasn't been said here today, we need to invest in clean coal technologies. It is an important resource, and we need to do a lot of R&D on clean coal.

Thank you very much for your time.

[The prepared statement of Lawrence R. Codey follows:]

PREPARED STATEMENT OF LAWRENCE R. CODEY, PRESIDENT AND CHIEF OPERATING OFFICER, PUBLIC SERVICE ELECTRIC AND GAS COMPANY

Mr. Chairman, I am Larry Codey, President and Chief Operating Officer of Public Service Electric and Gas Company. I very much appreciate the opportunity to testify today before this committee. The impact and interrelation of electric industry restructuring and the environment is a topic of vital interest and concern to my company, the customers we serve, and citizens and energy consumers in New Jersey and throughout the nation.

PSE&G is the largest electric and gas utility in New Jersey and one of the largest combined electric and gas companies in the nation. The utility is part of Public Service Enterprise Group (PSEG), a family of companies that in addition to traditional utility operations in New Jersey, includes PSEG Energy Technologies, a marketer of wholesale and retail energy and energy services in the Northeast/Mid-Atlantic region of the U.S., and PSEG Global, which develops and operates power production and energy distribution companies on an international basis. As an entity, PSEG owns and operates approximately 15,000 megawatts of electric generation. This includes PSE&G's 10,000 megawatts of domestic generation, 2,000 megawatts of which is coal-fired capacity based in New Jersey and Pennsylvania, and 5,000 megawatts in PSEG Global's overseas portfolio. Global's generation facilities are located in Argentina, Venezuela, China, and India. The company also owns electric and gas distribution companies in Argentina, Brazil, Chile, and Peru. Together, PSE&G, PSEG Energy Technologies, and PSEG Global serve approximately 11 million customers in the U.S. and overseas through power generation and sales and distribution of energy and energy services. Collectively, and as individual companies, we support competition, clean energy, and sustainable development at home and around the world.

The issue of how best to coordinate economic policy associated with restructuring of the electric power industry and environmental policy associated with the impact of power plant emissions on air quality is one that I believe offers this Congress and this Administration historic opportunities. I've said in the past that we are now confronted with the last, best chance to achieve clean air. The right public policy decisions in the context of electric industry restructuring will foster greater efficiency, produce lower energy costs, and spur development of new products and technologies while reducing this industry's impact on the environment through significant reductions in air pollution emissions.

No opportunity comes without risk, however, and I believe there is also the strong possibility that wrong decisions will exacerbate long-standing air quality problems, compromise the nation's ability to achieve health-based environmental standards, unfairly shift the costs of environmental mitigation among regions of the country, and skew the emerging competitive market for electricity by establishing the ability to emit pollution as a competitive advantage.

PSE&G is in a unique position to comment on the restructuring of the electric power industry and the potential impact—both positive and negative-on the environment. We have more than 10 years of experience in natural gas deregulation; we've been an active advocate in national industry forums for moving the electric industry

to competition; we're in the process of preparing for competition in our home state of New Jersey; we've been a vocal, persistent advocate for improved environmental performance; and we've backed up a commitment to environmental quality through successful implementation of voluntary programs affecting our own impact on air and water quality and our management of wastes.

New Jersey, with my company's active support, is instituting what I believe is the nation's most aggressive and comprehensive electric restructuring plan. As a result of legislation enacted in February and now being implemented by the state Board of Public Utilities, all electric customers, regardless of size, class, or location, will be able to choose their electric suppliers. Choice for all customers—residential, commercial, and industrial—starts on Aug. 1 of this year. The plan incorporates the largest across-the-board rate cuts in the nation (13.9% for PSE&G customers, plus 6% related to state energy tax reform) and the largest shopping credits in the nation (5.86 cents per kilowatthour) for residential customers. The 13.9% rate cut for PSE&G customers will return about $1.5 billion to the economy of New Jersey.

A key element of making this plan work and workable is that policymakers in both the legislative and regulatory arena really tried to be fair to all stakeholders. In addition to the benefits for customers, it allows my company an opportunity to recover legitimate stranded costs through securitization and a market transition charge and it will give our employees an opportunity to compete in the marketplace. We believe this plan will create an active, robust, highly competitive market in our state. Success in this market will be a function of ingenuity, integrity, efficiency, and talent. I believe the men and women who comprise PSE&G are up to this challenge, and we're anxious to get started.

One point that became very clear in the restructuring debate in New Jersey is that none of the stakeholders—legislators, regulators, customers—are willing to achieve lower-cost energy at the expense of dirtier air and a degraded environment. Our residents are aware of the relationship between the generation of electricity and emissions of air pollution, and they are acutely aware that they've been on the receiving end of nitrogen oxides (NO_X), sulfur dioxide (SO_2), and particulates—the source of which are exhaust stacks of coal-fired generating plants in the Midwest and South.

It's no secret that my company, and I, share these concerns about the relationship between our industry, the restructuring of the industry, and the environment. It's an issue that I've brought to the restructuring debate at industry forums and at many public venues, and I'm pleased to have the opportunity to raise it today before this committee.

We really have an important choice to make. We can seize what really is a unique opportunity to achieve the economic goals of a more efficient, lower-cost, more innovative energy market and position this change as a vehicle for improving environmental performance and at a reasonable and fairly allocated cost.

Of course, we can make policy decisions that will reward the dirtiest energy producers, stifle development and introduction of new, cleaner technologies, and force consumers to choose between cleaner air or cheaper electricity.

First, it's important to understand how significant power plant emissions are to air quality problems in the U.S. Electric generating facilities account for about two-thirds of all SO_2 emissions; almost a third of NO_X, and more than a third of carbon dioxide emissions. In addition to these pollutants, the U.S. Environmental Protection Agency (EPA) in about a month, will release reports from electric industry members on their emissions of air toxics, the acid gases and metals that are also byproducts of fossil-fuel electric generation.

Second, we now know that emissions travel hundreds of miles from their source and affect air quality on a regional basis. Emissions spewed into the air in the Midwest today becomes part of the airshed in the Northeast tomorrow.

Third, the existing system of power plant emissions standards, some based on fuel-source, some of the age of the facility, some on geography, was never meant to function in conjunction with nationwide retail electric markets.

Fourth, moving ahead with restructuring and the opening of markets on a nationwide basis without appropriate environmental safeguards will make existing air quality problems worse, make the cost of mitigation more onerous, unfairly shift these costs from the source of the pollution to where it ends up, and skew the emerging competitive market. This is because the dirtiest power will be the cheapest power.

So, the question is, what is the best way to reconcile and rationalize the decisions on energy policy and environmental policy in a manner that achieves efficient, competitive markets while actually improving air quality.

We believe this can be accomplished by incorporating national, uniform, more stringent emissions requirements applicable to all electric generating facilities into

comprehensive national electric restructuring legislation. These standards should be output-based, fuel-neutral generation performance standards governing NO_X and SO_2. This approach will link implementation of the standards to the opening of markets; result in all generators of electricity internalizing the cost of appropriate environmental controls; and prevent the shifting of these costs to other regions and other competitors. And it will result in reduced emissions and cleaner air, at a cost well below the savings and without jeopardizing other economic benefits that will accrue from competition.

PSE&G strongly supported legislation introduced in the last Congress by U.S. Rep. Frank Pallone (D-NJ), a member of this committee, that would have established output-based generation performance standards for nitrogen oxides and sulfur dioxide. This legislation attracted more co-sponsors than any other restructuring legislation introduced in the 105th Congress. It's my understanding that Rep. Pallone is currently revising this legislation and we look forward to its introduction in this session of Congress. It's also my understanding that Rep. Pallone is considering the addition of environmental disclosure provisions to the legislation. New Jersey included strong environmental disclosure rules in its state restructuring plan and we believe disclosure will be even more important as a component of federal legislation. Consumers have a right to know the environmental component of the energy products they purchase. They have a right to relate this information to price and make informed, intelligent purchase decisions. Disclosure rules also are needed to protect consumers from unfair, unscrupulous marketers, and will actually help the development of a market for legitimate "green" energy products.

In addition to this legislative approach, PSE&G continues to support EPA's regulatory focus on implementing NO_X reductions in the eastern half of the U.S. and SO_2 controls required for compliance with Phase II of the acid rain program. And, yes, we do believe that both legislation and regulatory action are required to solve the problem. It's important to note that the EPA's NO_X reduction rule commonly referred to as the "SIP Call" would establish only a seasonal cap on NO_X emissions during the five months of summer peak demand, and it only affects 22 states. It's an important and positive step, but it's a policy that's been under constant political attack since it was announced and its also the subject of litigation which raises the possibility—and uncertainty in terms of business planning—of delay.

This point became even more important last week when the U.S. Court of Appeals for the District of Columbia struck down provisions of the EPA's new National Ambient Air Quality Standards for ozone and particulates. Let me be very clear: This was no victory for business or the utility industry. My view is that it was the worst possible development because it hampers our ability to take actions necessary to protect public health and incorporate these actions into very difficult business decisions we all will be making over the next five years.

We all know that fossil-fuel electric generation produces emissions that affect public health. We had in place a reasonable schedule for control of these emissions and a reasonable course of action designed by EPA to protect the public. The court decision upsets this process. It creates confusion and additional risk for our industry. I don't believe that we will be held harmless if, at some point, in the future it's determined that we didn't act quickly or prudently enough to protect the public.

Finally, I'd like to comment on concerns expressed by some of my colleagues from the Midwest that compliance with the EPA NO_X reduction program will compromise electric system reliability during peak summer demand periods. This is just not the case. The Ozone Attainment Coalition of which PSE&G is a member, last week released a comprehensive study which clearly shows that power plants can comply with the EPA's requirements without compromising reliability. This analysis incorporates the latest data on power plant capacity, the number of plants that would require installation of NO_X control technology such as selective catalytic reduction, the time required to install the controls, anticipated demands growth in affected regions, and an assessment of emissions trading and other flexible compliance mechanisms built into the EPA rule. It also includes evaluations of "worst-case" scenarios involving unplanned power plant outages and unavailability of generating capacity. The analysis of all of this data shows that necessary power plant retrofits could be accomplished during normally scheduled plant maintenance outages. Additional down time would affect only about 0.5% of generating capacity and only during non-peak periods.

The bottom line is that affected utilities have a four-and-a-half year compliance window in which to plan and complete installation of control technology. Based on more than 30 years experience in this business, I believe this is enough time. We know how to plan and complete these kinds of projects. Let's start doing the work.

This completes my testimony. I want to again thank the chairman and the members for honoring me with this opportunity. I'll be happy to answer any of your questions.

Mr. BARTON. The Chair would yield to the gentlewoman from Missouri to introduce our next witness.

Ms. MCCARTHY. Mr. Casten was not yet in the room in the earlier introductions, but I am delighted he is here in this panel. He is CEO of Trigen Corporation.

Mr. BARTON. Let's suspend until the bells are done messing around.

Ms. MCCARTHY. Mr. Chairman, as much as we have talked back and forth in these hearings about the economic opportunities present, Mr. Casten is living proof in his work as CEO of Trigen Corporation of that very policy, and as the legislation is passed which will allow consumers to choose their electric supplier, I think, as does Mr. Casten, that competitive advantage will go to those companies who harness the power of efficiency.

Trigen has pushed the technology envelope to achieve economic and environmental goals. They are a company with the right idea, having grown from revenues of $1 million in 1987 to $247 million in 1997, and this is something that I believe is very critical to the future of any electric restructuring, that economic component.

They serve quite a population, Mr. Chairman. Their customers get their energy from 41 plants in 27 locations and one of them in Kansas City, Missouri in my district where they do a fabulous job in an area where no other utility thought it was economical to do so.

Mr. Casten is an advocate for market-based solutions to environmental problems. He is your cup of tea, Mr. Chairman, and I am delighted he is here.

Mr. BARTON. We are going to hear Mr. Casten's words of wisdom. Then, unfortunately, we have 3 votes on the floor and so we are going to have to recess to let the members votes, and it is probably going to be close to 2 before we get back, but we are going to hear you first and then we will take a recess.

STATEMENT OF THOMAS R. CASTEN

Mr. CASTEN. Thank you, Mr. Chairman, and thank you for the kind remarks, Congresswoman McCarthy.

I want to compliment you for pursuing improvements in the way the country regulates the electricity business. The original logic of monopoly regulation is long gone, erased by technological process. Thankfully, monopoly protection of electricity is starting to give way across the country. However, much of the outmoded regulatory apparatus is in Federal laws.

I come before you today as an environmentalist who makes his living as a capitalist in the energy business. I am an environmentalist who has faith in the power of the market. At Trigen we have used one key tool to compete, and it is the same tool that I believe will be deployed by every energy company when outmoded regulatory roadblocks are removed. That tool is efficiency.

Trigen has 45 plants and projects with a capacity of roughly 5,000 megawatts spread through 18 states, Canada and Mexico that produce heat and power. Our combined heat and power plants

typically use half the fossil fuel and are twice as clean as the average U.S. electric generating plant. We burn a wide range of fuels and use many technologies to achieve these efficiencies, but each of these combined heat and power plants shares two features. It combines the generation of heat and power instead of wasting the heat, and it saves our consumers money.

My company's environmental performance with consumer savings is a model of what America's energy business will become over the next decade. We are twice as efficient because it is the way to compete and gain market share. We burn less fuel so we can sell less expensive products: Heating, cooling and electricity.

Fuel use efficiency is a product of market forces and technological advances. The present fuel use inefficiency is a product of State and Federal Government rules that have become outmoded. I firmly believe that this Congress and the administration can spur the economy and clean the environment by removing the present statutory and regulatory barriers to efficiency. I believe that the social purposes that the present regulatory laws were designed to address can be met with modern rules that don't act as barriers to efficiency.

As was mentioned, I wrote a book last year that among other things listed the laws, regulations, policies and habits of mind that stand in the way of efficient generation. I will not take the subcommittee's time to go through that list now, but I do ask that a copy of my book Turning Off the Heat be included in the record of this hearing. The book touches on issues that you are addressing today, including PURPA and stranded costs.

Mr. BARTON. We can put in a summary of the book. I don't believe that we have enough money in the treasury to put the whole book in the record, but we will put a synopsis of the book and keep the book on file.

Mr. CASTEN. Mr. Chairman, we attached a short bit that just lists the barriers to efficiency.

Mr. BARTON. That will be put into the record.

Ms. MCCARTHY. Mr. Chairman, I believe if we followed the guiding premises of the book, we would save the treasury a lot of money.

Mr. BARTON. That is probably true, and we are not going to take that away from your time. Thank you.

Mr. CASTEN. I am going to skip most of those issues because I would like to focus my remarks on the environmental aspects of restructuring as well.

Congress and the administration need to address the fact that the Clean Air Act is a major roadblock to the installation of clean, modern electric generation. Unleashing competition by deregulating will have positive impacts on both the environment and the economy, but the U.S. will do considerably better on both counts if Congress also modernizes the Clean Air Act.

What is wrong with the Clean Air Act? Simply put, the law has a blind spot. The law focus on the benefits of modern emissions control technology, things like scrubbers, but it is blind to the best possible environmental control. The best possible environmental control is to not burn the fuel. Efficiency. The law blocks the deployment of modern efficient energy generating technology. The

Clean Air Act through its new source review requirements discourages both existing plant owners and new entrants from deploying efficient technologies that save money and reduce pollution. The act makes it practicably impossible to deploy efficiency improvements in existing power plants without triggering an environmental permitting process, and that process is likely to require the addition of costly emission controls, so the power plants are left the way that they are.

The new source review combined with grandfathering encourages the life extension of obsolete, expensive, dirty power plants that use on average 35-year-old technology. New plants which are two times as efficient, up to 20 times cleaner, and produce cheaper power are forced by the Clean Air Act to install end of pipe add-ons and those add-ons often make it uneconomic to deploy the doubly efficient plant. A modernized environmental law can encourage replacement of the old dirty plants with new plants that save money and reduce emissions. This is what a competitive energy market will push people to do, but our environmental laws push the other way. The Clean Air Act makes perfection the enemy of the very good.

The problem is not a reason for finger pointing, not yet at least. The Clean Air Act was written at a time when few people imagined the efficiencies that are now economically available, from 33 percent to 90 percent efficiency gains. We no longer have the excuse to leave the act alone. I appreciate that many will flinch at the notion of opening up the Clean Air Act. It is an understandable concern given the extremity of the debate on some environmental matters.

However, I believe that the rewards to the economy and the environment will be very large. We should take full advantage of the best technologies our economy can provide. Correctly done, regulatory and statutory change will produce an environmental benefit and will save money. As an environmentalist, I think we should move forward in a way that takes full advantage of these efficiencies. Competition will do part of the job but the environmental laws have to change, too. Thank you for the opportunity to testify.

[The prepared statement of Thomas R. Casten follows:]

PREPARED STATEMENT OF THOMAS R. CASTEN, PRESIDENT & CEO, TRIGEN ENERGY CORPORATION

Mr. Chairman and members of the Subcommittee, thank you for inviting me to appear today.

To begin, I want to compliment you for pursuing improvements in the way this country regulates the electricity business. The old logic of monopoly regulation is clearly inadequate to today's needs and, thankfully, is starting to give way across the country. Even without passing legislation, Congress has helped raise the nation's awareness of the need for change and, in so doing, you are moving the country ahead in a good direction.

I come before you today as an environmentalist who makes his living as a capitalist in the energy business. I am an environmentalist who has faith in the power of the market. I am a power company executive who knows beyond any doubt that our outmoded approach to energy and environmental regulation results in wasted money, wasted fuel, and needless pollution. As an independent power company without the benefit of any monopoly, we have used one key tool to compete, and it is the same tool that will dominate the energy business when monopoly restrictions and certain other barriers to competition are removed. That tool is *efficiency*.

My company's success is a model for what America's energy business can become over the next decade. Trigen owns, operates, or is building 45 plants spread through

18 states, two Canadian provinces, and Mexico. Our mission is to burn only half of the fossil fuel and produce only half of the pollution associated with conventional generation. In 1998, our plants emitted less than half of the pollutants that would have come from conventional generation of the same energy. Our combined heat and power plants converted 65% to 91% of the energy in the fuel to useful heat and electric power, compared to 33% average efficiency for the entire US electric power industry. We saved our customers money, and as a bonus, emitted only 54% of the greenhouse gasses that would have come from conventional generation of the same heat and power. If the US power generation industry had the same efficiency as Trigen, US consumers would save over $100 billion per year, and total US greenhouse gas emissions would be 16% below 1990 levels.

As an environmentalist, I'm pleased by our performance, but we did this for business reasons. We're twice as efficient because it is the way to compete, the way to gain market share by extracting more value from every dollar spent on fuel, the way to give better value to our customers.

Competition forces firms to increase efficiency or lose market share. The US electric industry, which has been shielded from market forces for 90 years, reached an efficiency of 33% in 1959, and has not improved in the ensuing 40 years.

It is vital to understand why there has been no increase in the dismal efficiency of the entire US power generation industry for four decades, in the face of incredible improvements in technology. Our outmoded system of monopoly protection and power regulation has produced a power industry with plants that are 35 years old, on average, and that employ technology that is environmentally and economically obsolete. I firmly believe that it is the proper task of this Congress and the Administration to examine fully the statutory and regulatory barriers to generation efficiency—and eliminate them. If Trigen can do what we've achieved under the current rules, imagine what our remarkable economy could achieve with enlightened rules

I have been trying to change the way the US makes power for 25 years, and have repeatedly asked myself why we are stuck with such inefficient, dirty, and expensive power generation. As you may know, I wrote a book last year to explain why we must double the efficiency of our power generation. Among other things, I listed the laws, regulations, policies, and habits of mind that stand in the way of efficient generation. I called them "Barriers to Efficiency," and they filled chapter eight of the book. I'll not take the Subcommittee's time to go through that list now, but ask that a copy of my book, *Turning Off the Heat,* be included in the record of this hearing.

As this Subcommittee weighs the environmental benefits of electricity market competition, I urge you to take on an equally important and very delicate task. Congress and the Administration need to address the fact that, second only to monopoly regulation, the Clean Air Act is the major roadblock to installation of clean, modern electricity generation.

To be clear, I am no enemy of the Clean Air Act or of tough environmental regulation. I know what this country would be like without those protections, and I wouldn't wish to live in that kind of place. But Congress can and should modernize the Clean Air Act so it no longer stands in the way of a much cleaner electricity industry.

What's wrong with the Clean Air Act? Simply put, the law has a blind spot. While the law recognizes and, indeed, relies upon the benefits from modern emissions control technology (e.g., scrubbers), it is blind to the benefits of modern energy generating technology. Standards in the act are not related to the amount of useful energy produced from a given unit of fuel, and thus do not recognize or promote the single best environmental control strategy possible—burning less fuel.

The Clean Air Act, largely through its New Source Review requirements, discourages both existing plant owners and new market entrants from taking reasonable actions which would reduce pollution. It is practically impossible to modify an existing plant to make efficiency improvements without triggering an environmental permitting process that is likely to require the addition of costly emission controls. Discouraging efficiency improvements encourages the continued use of old technologies.

The average US power plant was built in 1964. Thirty-five year old technology is not only inefficient, but also emits about twenty times as much nitrous oxides per megawatt hour as a new plant without emissions controls. Yet, current environmental regulation holds up the construction of new and doubly efficient power plants for up to 18 months of permitting. Regulatory agencies, by simply following the present law, often deny a permit unless the new plant adds end of pipe controls to reduce the emissions per megawatt hour to 1% of the average old plant. These added controls are expensive and consume energy, so they reduce efficiency. More importantly, they create strong economic incentives to keep repairing and extending the life of the old, inefficient and dirty plants. By enacting a new regulatory approach that allows every generator of heat and power the same pounds of pollutant

per megawatt hour generated, Congress can trigger broad deployment of new, clean technology—a boom in efficient energy investments that will help every consumer and a broad slice of American industry and labor.

A competitive energy market will push the power industry to invest to turn over capital stock. Since current technology is 20 times cleaner, the by-product of cheaper power will be reduced emissions. But our environmental laws push against this trend. The Clean Air Act makes perfection the enemy of the good. I have included with my testimony a recent paper we prepared on this matter.

This problem is not a reason for fingerpointing. Not yet at least. The Clean Air Act was written at a time when few people foresaw the efficiencies achievable from energy generating technologies. We no longer have that excuse. We know that modern generating technology can be twice to three times as efficient as the national average. We can not afford to allow outdated environmental regulatory approaches to block the efficiency gains that will otherwise result from unleashing competition and deploying new technology.

Many in the environmental community and regulatory agencies will flinch at the notion of changing implementation or the actual language of the Clean Air Act. It is an understandable concern, given the extremity of debate on some environmental matters. I believe the opportunity outweighs the concerns. Congress has an opportunity to induce modernization of the power industry, and save money and pollution. We believe that by eliminating the barriers to efficiency and unleashing market forces, Congress will cause over $200 billion of new power plant construction, creating many jobs. A modernized and competitive power industry will reduce the cost of heat and power by over $100 billion per year, after paying for the new investment. The environment will be greatly improved by the overdue retirement of obsolete and dirty generating plants. We will shift our environmental spending from end of pipe scrubbers to efficiency. In this way we will prevent pollution and save money. There will be an added bonus. US greenhouse gas emissions will fall dramatically as a result of the heat and power industry burning less fuel and charging less for their products.

Thank you for this opportunity to testify. I will be happy to respond to questions.

Mr. BARTON. Thank you, Mr. Casten, and I want to thank our entire panel. I am going to ask that you remain near the hearing room. We are going to recess until 1:50, and that is eastern daylight savings time.

[Brief recess.]

Mr. BARTON. The subcommittee will come to order. We had one additional vote, which is why it took us a little longer to get back. The Chair is going to reconvene the hearing and hopefully we will have members come back, but I am going to recognize myself for the first 5 minutes.

Mr. Codey, I was actually here to hear your oral version of your testimony in which you supported a renewable requirement in the legislation, if we move to legislation. Ms. O'Neill, who represents an environmentally correct power marketing company, in her testimony indicated that a mandate was not necessary since Green Mountain is actually doing what many in the environmental community wish to be done. Why do you think that it is necessary to put something similar to the administration's bill in terms of renewables into the legislation?

Mr. CODEY. Well, Mr. Chairman, I think we have to recognize that initially I think there has to be incentives for people to move in this area. It is great for marketers to say that they are going to have a certain amount of renewables. We also want to encourage certain developers to have those kinds of renewable facilities available. And I think that requirement of knowing that there is a firm marketplace for developers to invest in that kind of technology will then have it available for marketers to go out and market it. So I do think that it is necessary.

I think that we can talk about what is the reasonable level, what is the reasonable approach in terms of how quickly you get to that level. But I do think that it needs some sort of a requirement in order to stimulate the market.

Mr. BARTON. Ms. O'Neill, what has been the market reaction to the various mixes that Green Mountain presents to the public? My understanding is that one of your options is green-green, totally renewable.

Ms. O'NEILL. That is correct.

Mr. BARTON. So I think you give them two or three choices. Which choice is most popular, and in your opinion based on the actual data that your company has generated, what is the delta for purely green power? How many Americans will opt for that if they know that it is totally renewable?

Ms. O'NEILL. In general, the research is that about 20 percent of American consumers will pay more for renewable energy and that is before there has been any significant amount of consumer education on the topic, and so we think that the potential is significantly larger than that.

In terms of our experience, we find significant numbers of customers choosing all three of our power blends. In Pennsylvania, for instance, the low price is a cleaner blend, including just 1 percent of new renewable resources. The other two are both Green-E certified, one being 50 percent renewables and the third being 100 percent with 5 percent new. Again, I don't have the numbers specifically in front of me, but good numbers of consumers are choosing each of those blends.

Mr. BARTON. But if I read your marketing brochure correctly, I mean, I went to A&M so there is no guarantee that I am doing that, but if I am doing that, what is called the best green blend is 6.8 cents a kilowatt hour, which is about 2 cents a kilowatt hour higher than the good blend, and you don't show a baseline for regular power, but I would assume that regular power is not going to be much less than the 4.83 cents a kilowatt hour. So for 2 cents more, you are getting the best that is available. Is that one interpretation of this marketing brochure?

Ms. O'NEILL. Yes. What that does indicate is that there is a 2-cent spread between our lowest price blend and our highest priced blend. Across the top it tells you what the prices are essentially if you stayed with your current utility and I think the one that you have in front of you is for one of the utilities in Pennsylvania that is one of the lower cost utilities. In Pennsylvania, in PECO, for instance, it is possible to buy our lowest cost blend for about the same amount that you would spend if you stayed with the current utility.

Mr. BARTON. Mr. Casten, I was intrigued by your testimony about efficiency and how that should be utilized in any legislation. Obviously combined cycle natural gas generated electricity is efficient today. What is the most efficient coal fired cycle? Is there such a thing as a combined cycle coal generator that would approach the efficiencies of the natural gas fuel?

Mr. CASTEN. Mr. Chairman, when we combine the generation of heat and power, as we do at Coors in Colorado or Tuscola in Illinois, we approach 85 percent efficient with coal. By contrast the

average for the Nation since 1959 is 33 percent efficient for all electric generation. The combined cycle gas turbine plants that you referred to will run 55, 57 percent efficient. In order to use the coal, we need to put the plant near where somebody is making chemicals, making beer, heating universities, whatever, and capture the heat that is left over instead of throwing it away and then we can go to 85 percent.

Mr. BARTON. Some of the concerns from our coal State members about coal not being competitive are misplaced then?

Mr. CASTEN. I think they are somewhat misplaced. I want to be fair. It is a more difficult fuel to burn. It is difficult to get the permitting and the siting to put a new coal plant in. There are some very clean new technologies and there is a price advantage on the fuel. We are burning coal in several of our plants.

Mr. BARTON. For an older coal plant that has been given different environmental standards under the Clean Air Act that the environmentalists say are dirtier, it is very difficult to retrofit those to become efficient; is that a correct statement?

Mr. CASTEN. It is, depending on where the plant is located. In my testimony in the President's panel I talked about a coal plant two miles south of National Airport and that whole plant could be heating this office with the right arrangements. So it is a location sensitive issue. If it is located at Four Corners, you are going to throw the heat away.

Mr. BARTON. My time has expired. The Chair would recognize the member from Michigan, Mr. Dingell, for 5 minutes.

Mr. DINGELL. Mr. Chairman, I thank you again for your courtesy.

This question is to all of the panelists. Yes or no. Should restructuring legislation require electricity providers to disclose information relative to their generating sources and their impact on the environment, yes or no?

Ms. O'NEILL. Green Mountain is in favor of such a policy, yes.

Mr. NIEMIEC. Yes.

Mr. COHEN. Yes.

Mr. AGATHEN. I would say yes as long as it is done properly.

Mr. CODEY. Yes, including marketers also.

Mr. CASTEN. Yes.

Mr. DINGELL. Should there be a requirement for them to tell the truth on this matter?

Mr. AGATHEN. Marketers?

Mr. DINGELL. Everybody.

Mr. CODEY. Yes.

Mr. CASTEN. Yes.

Ms. O'NEILL. Sure.

Mr. DINGELL. All agree. Now, should the requirements of this bill apply to the publics, the munis, the marketing authorities, TVA, Bonneville and so forth, or should it apply only to the privates, and I am talking about all of the requirements in the bill? Yes or no.

Mr. CODEY. In my opinion, it should apply to all of them.

Mr. CASTEN. I agree.

Mr. DINGELL. Or all or none or some.

Mr. COHEN. You are referring to the disclosure requirements?

Mr. DINGELL. Should the bill apply to publics, munis, TVA, Bonneville, or should it apply only to the privates?

Mr. COHEN. You are talking about the environmental provisions of the bill?

Mr. DINGELL. All of the provisions because the bill is going to impose many requirements on all of the producers and deliverers of electricity.

Do you want to come down in the "I don't know" category?

Mr. AGATHEN. My position would be if the States have allowed certain entities to opt out of the deregulatory process——

Mr. DINGELL. I am talking about the Federal package.

Mr. AGATHEN. Or the State municipals or REA coops, I think you could make an argument it should not apply there. But if they have opted into the competitive situation, then yes.

Mr. DINGELL. My time is limited. Yes or no.

Mr. COHEN. With respect to the environmental provisions, yes. I don't consider myself to be expert on other pieces.

Mr. DINGELL. How about antitrust, should they be exempt?

Mr. COHEN. I don't have an opinion on that.

Mr. DINGELL. Should they continue being exempt from regulation altogether?

Mr. COHEN. There are many different aspects of that question.

Mr. NIEMIEC. I would say no just because I can't imagine one bill that would cover all of the various issues. It would seem to me that there would be some exceptions.

Mr. DINGELL. You don't think that this bill covers all aspects of deregulation?

Mr. NIEMIEC. As I understood the question——

Mr. DINGELL. You would have it apply to the IOUs but not to the other components of the industry?

Mr. NIEMIEC. I think the question was——

Mr. DINGELL. My question is should the bill cover everybody or only some, and you are saying that it should only cover some. I don't want a debate, yes or no.

Mr. NIEMIEC. I would say no.

Ms. O'NEILL. I am going to duck that because I haven't thought through all of the ramifications. In general, environmental policy should apply generally to all organizations.

Mr. DINGELL. But as to the balance, I am putting you down you don't know?

Ms. O'NEILL. Correct.

Mr. DINGELL. Should we address in this bill only the question of regulation or deregulation or should we impose large environmental components on this bill? Yes or no.

Mr. AGATHEN. Absolutely not on the environmental components.

Mr. CODEY. Congressman, I don't think that is a yes or no answer. I think an outbased standard is a very simple number, and it can be put in this bill. It should apply to everybody, and I think it is a very simple thing to do.

Mr. DINGELL. Sir.

Mr. CASTEN. I think this bill must address the Clean Air Act and take the barriers to efficiency away.

Mr. DINGELL. So we should address the Clean Air Act?

Mr. CASTEN. Yes, sir.

Mr. DINGELL. How about down at this end.

Mr. COHEN. We should address emissions control in this bill.

Mr. NIEMIEC. I say absolutely not.

Ms. O'NEILL. There should be some environmental policies provisions contained in restructuring.

Mr. DINGELL. Let's talk about RPS. Should RPS apply to everybody in the industry, and if not, who should be exempted?

Ms. O'NEILL. A renewables portfolio standard if enacted would apply to participants who are in the market and should apply to utilities and marketers.

Mr. DINGELL. How about publics and privates and munis and TVA and the coops and the marketing authorities like Bonneville, apply to them or not?

Ms. O'NEILL. I would think that that would apply to them as environmental.

Mr. NIEMIEC. RPS should apply to no one, it is a bad idea.

Mr. COHEN. It should apply across the board.

Mr. AGATHEN. It should supply to no one, it is a bad idea.

Mr. CODEY. It should apply to anyone selling in the retail market.

Mr. CASTEN. The bill should encourage renewables to find a better way than RPS to do it. Apply to everybody.

Mr. DINGELL. You don't think that RPS works very well?

Mr. CASTEN. I think there are better ways.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. BARTON. If you wish a second round of questions, I am sure that the panelists will agree.

Mr. DINGELL. I would like to have the authority to put written questions to the panel members and have their responses.

Mr. BARTON. Without objection, that is a right that all members of the subcommittee obviously have.

Mr. DINGELL. Thank you.

Mr. BARTON. The gentleman from Illinois, Mr. Shimkus, is recognized for 5 minutes.

Mr. SHIMKUS. I want to direct my first question to Mr. Agathen on some issues that people make the assumption that they are correct. Mr. Agathen, is there much coal fired capacity sitting around unused in the United States that will run once competition kicks in? In other words, there is the big fear that we have all of these coal fired plants sitting around not doing anything and if there is a competitive market, that we are just going to bill all of this stuff out.

Mr. AGATHEN. The answer is no. It will have very little, if any, impact because coal is already competing on an economic basis against all of the other units. It is generating economically now. The wholesale market is competitive. If a neighboring utility is generating at 4 cents and we are generating at 2 cents, they are buying all they can from us already, so we are maxed out.

Mr. SHIMKUS. Do you know of any coal fired plants being built in the United States right now?

Mr. AGATHEN. I think there may have been one or two announced over the last 5 years, and I don't know whether they were completed.

Mr. SHIMKUS. If in the dirty Midwest we had all of these extra coal fired plants sitting around, would there have been the price spikes we experienced last year?

Mr. AGATHEN. No.

Mr. SHIMKUS. If we accept the assumption that we are going to kick on all of these additional plants, which there are none, would those new plants not be under the current Clean Air Act?

Mr. AGATHEN. Yes, they would.

Mr. SHIMKUS. So there would be an argument that there is not additional, new excessive dirty air being created by these coal fired plants? It would be the same restrictions that we have now which have done a great job in cleaning up the environment?

Mr. AGATHEN. I would agree with that.

Mr. SHIMKUS. And I would also add that it destroyed the southern Illinois coal industry, which of course has taken a lot—thousands of United Mine Workers out of their jobs.

Ms. O'Neill, I have a question on this advertisement. Those towers to me seem to be cooling towers. Is that true?

Ms. O'NEILL. No, they are coal towers.

Mr. SHIMKUS. Because in Illinois those are the cooling towers from nuclear plants. And if they were, I would then make the assumption that might be false advertising because the shadows make it appear that they are dirty pollutants, whereas we know that nuclear power is pretty clean as far as emissions.

A better argument if you want to bring in the nuclear equation is to have the temporary nuclear storage sites on the left side addressing the issue of temporary storage as nonenvironmentally friendly. That may help us on our other bill of getting a temporary storage site, which is also an additional cost which we had addressed to the other panel as far as the costs of doing business because of nuclear sites.

So you may want to talk to our advertisers because I would say that those are—in my view those are nuclear cooling towers which are emitting clean—just steam into the air.

The last question I have is for Mr.—and I am sorry if I butcher the name—Niemiec. If in the administration's bill they want 7.5 percent generation RPS by 2010, is that doable, and where will it come from?

Mr. NIEMIEC. I think the answer to that is I don't think that it is doable. Out of all of the electric generation, 7.5 percent in 2010 must come from renewables. Let me just say year 2000 projections and 2010 of the incremental new capacity, over 55 percent, 55 percent would have to be renewables. So when people say 7.5, they are really saying 55 percent of the incremental new capacity. It will create a tremendous boom, and I can't imagine where it would all come from in that 10-year span.

Mr. SHIMKUS. Do any of you see a massive increase in coal fired plants being planned for the next 10-15 years?

Ms. O'NEILL. No.

Mr. NIEMIEC. No.

Mr. COHEN. No, but I submit that is not the issue. The concern is the existing level of——

Mr. SHIMKUS. I will take the no.

Mr. AGATHEN. No.

Mr. CODEY. I wouldn't say massive. I think there may be some. We had a coal fired plant built in South Jersey in the last 2-3 years, and so I do think that there are opportunities to do that.

I would like to indicate one other point that was raised about closing coal plants. We have to remember that there is going to be a trading opportunity with any restructuring so that plants would not be forced to close.

Mr. SHIMKUS. It is not the plants, it is the coal mines.

Mr. CODEY. But they would still use the coal, they would just buy credits.

Mr. SHIMKUS. No, they will buy western coal and they will close the mines.

Mr. Casten.

Mr. CASTEN. Let me answer with facts. The latest tally of announced new plants is 62,000 megawatts, of which 1,000 is coal.

Mr. BARTON. Amazing, we have a witness that is answering with facts, and he is a Democrat and a friend of the President, which is doubly impressive.

The Chair recognizes Mr. Pallone of New Jersey for 5 minutes.

Mr. PALLONE. I will leave that the way that it is.

Let me ask Mr. Codey about the generation performance standard. We have a generation performance standard in my bill, and I just wanted to ask you at what level you would set a generation performance standard and talk about that.

Mr. CODEY. I think the level that was included in the bill which you sponsored in the last session was the appropriate level, and right now I am forgetting the amount of tons that equated to. But clearly that would have the effect of cleaning up the air.

I also want to point out that the generation performance standard doesn't shut down any plants. What it does is it says you have to be this clean. If you are not this clean, you can buy credits from other people who are cleaner and still operate your plants, but the environmental costs of putting pollution in the air is reflected then in the market price of energy, and that is really what we are trying to get to.

Mr. PALLONE. Thanks, Larry.

I wanted to ask about mercury emissions, and this gets a lot of attention in my district and in New Jersey. Let me ask Mr. Cohen first about how you think utility mercury emission reductions should be achieved? In other words, do you believe, for example, that mercury should be included in an emissions trading program?

Mr. COHEN. That is a real complicated question that I don't think anyone has the full answer to right now. It is pretty clear that if we impose stricter standards for sulfur and we are scrubbing some of the flue gas, we will take out a lot of mercury. There will be a lot of mercury co-benefits from scrubbing and so that you may get some of those results in tandem with imposing emission controls for the conventional pollutants. There are lots of technological issues there.

I think the most likely way to go is to look at some kind of minimal performance standard for mercury. I think the question of trading is a vexed one because it does appear that there are local impacts of mercury emissions. The closer you get to the stack, the more dense the concentration of deposited mercury. So if you have

fresh water lakes and other aquatic areas close to a plant, you may not want to shift all of the mercury emissions to one particular hot spot. That is my only reservation about the trading piece, but this probably needs a little more study before legislation is enacted.

Mr. PALLONE. Mr. Casten got into this before, and I would like to ask him, and maybe Ms. O'Neill as well, when you—we talked about the Renewable Portfolio Standard, and you sort of got into this—whether you can identify methods other than a Renewable Portfolio Standard to provide incentives for the greater use of renewables?

Mr. CASTEN. First of all, let me set the record straight. I am a registered Republican who is very concerned about the environment, and I hope that is not an oxymoron.

Mr. PALLONE. Well, there is Teddy Roosevelt.

Mr. CASTEN. Congressman, I think so that your generation performance standard is the start of the way to get at the renewables. I would like to see you replace the other rules. Allow an allowance of pollutant per megawatt hour generated of heat or power. Apply it to everybody regardless of fuel, the age of the plant, whether they are public, private or otherwise, and then let people trade if they don't meet it.

What that does is eliminates the need for Renewable Portfolio Standard because it creates a property right that comes from generating power that doesn't have any pollutant. So any renewable that is not producing NO_X or not producing SO_X would have some pounds of spare on their level of the allowance, and they would sell it to other people who produced too much NO_X. The beauty of that is that the market will decide what the level of the price difference is. It will flex as technology moves along, but it does provide the incentive for what we really want out of renewable. We have to ask why do we want renewable, and we want it because it is less polluting and because it does some other things.

Mr. BARTON. Would the gentleman yield. We will give the gentleman additional time.

Based on what you just said, nuclear would qualify?

Mr. CASTEN. It certainly would. One of the advantages of nuclear is it does not put out NO_X. It may have some other disadvantages, but allow all of those to work into the pricing.

Mr. PALLONE. I just wanted to have Ms. O'Neill respond to the same question, and also about the Renewable Portfolio Standard, whether you distinguish between emerging and existing renewables, but also the same question that I asked Mr. Casten.

Ms. O'NEILL. I do want to clarify that my testimony doesn't say that there should not be a renewables portfolio standard. It lists it as one of several mechanisms that should be considered by Congress as part of a comprehensive restructuring bill. The challenge with a Renewable Portfolio Standard is to design it in such a way that it represents a floor for renewables development so that all consumers are getting some element of renewables and a competitive market could build on top of that and it doesn't represent a competition for the competitive market.

And again, there are other mechanisms that my testimony referred to. Disclosure standards and a systems benefits charge are

other mechanisms, good market based mechanisms for supporting the development of renewables, and in particular new renewables.

Mr. PALLONE. Okay. So that really answers the second part of that about emerging versus existing renewables.

Ms. O'NEILL. I think that is right. Yes.

Mr. BARTON. Thank you. The Chair recognizes the gentleman from Maryland, Mr. Ehrlich.

Mr. EHRLICH. I am going to yield my time to Mr. Shimkus.

Mr. BARTON. You can't yield and leave.

Mr. SHIMKUS. He will want to stay to hear my questions.

Ms. O'Neill, on your portfolio do you consider hydros as renewables.

Ms. O'NEILL. Small hydro, and that is less than 30 megawatts, has been considered by Green E as being a renewable resource. Large hydro has not been considered a renewable resource.

Mr. DINGELL. Why do you distinguish between small and large? They both impound water, they impede fish migration, they carry with them their own environmental problems. Why is small hydro environmentally benign while large hydro is not?

Ms. O'NEILL. That is rough, true justice, to say the least. And Green Mountain is working with American Rivers on a project that would help define what is low impact hydro versus real impact hydro as a better alternative to looking at water resources than large and small. But doing rough justice right now, that is what the Green E program, which represents a large group of environmentalists, has erected as the standard for renewable versus nonrenewable.

Mr. SHIMKUS. Reclaiming my time, Mr. Dingell, but it was a very good question because the administration, as we learned last week, they are not including hydro as part of the renewable portfolio and that is why I have asked what is going on with that issue.

Mr. Cohen, last fall voters rejected ballot initiatives in California and Massachusetts which would have overturned State restructuring laws. In both cases the environmental community, including your former employer, the Conservation Law Foundation, opposed the initiatives and supported retention of State restructuring laws. Neither law contains clean air new source performance standards which you have insisted are necessary today. If competition without this new emissions restriction is bad for the environment, why has the environmental community fought to retain the California and Massachusetts restructuring laws?

Mr. COHEN. Actually, that is not a factually correct statement.

Mr. SHIMKUS. Can you correct it for me?

Mr. COHEN. The Conservation Law Foundation for which I formerly worked supported a series of agreements before the public utilities commission that would have put in place restructuring with environmental conditions, new source performance standards. And those were put in place for several of the utilities in the state. The legislation also that was finally passed and which my employer supported after I left also contains an environmental mandate for emissions control. I don't know the exact specifics, but it does push—it does require a cleanup of existing sources within the State.

Mr. SHIMKUS. Thank you. And I am just going to close and yield back my time by saying that in a restructured environment the Clean Air Act will still apply and I think we have heard from our panel that there is going to be basically no—or very little new coal generating facilities in the country, and I think that is a premise which would help us carrying this debate forward.

Thank you, Mr. Chairman. I yield back.

Mr. BARTON. Does the gentleman from Maryland yield back his time?

Mr. EHRLICH. I yield back the balance of my time.

Mr. BARTON. The gentlelady from Missouri is recognized for 5 minutes.

Ms. MCCARTHY. Mr. Casten, I thank you for being here and sharing with this committee your book Turning Off the Heat, and I do recommend it to everyone. One of the things that I wanted you to address, in the book you suggested as a practical matter that utilities are going to need some kind of cost recovery as part of restructuring. I wonder if you would make any suggestions to the committee whether that should be at the Federal or State level.

And another point you touched on repeatedly in your answers here today and in your testimony are the obstacles to improvement of existing plants and construction of new ones and particularly with regard to the Clean Air Act and other regulations that are barriers. I would like to give you an opportunity to elaborate on that if you have not brought up everything that you would like to share with the committee, because I do think the barrier issue is critical to us constructing a good bill.

Mr. CASTEN. I like living in a society where it is the rule of law and when we change the laws, there is an attempt to make people whole. I think stranded cost is an issue that is part of the fabric of our society. The question is whether it is going to be fairly done or end up with people overstating very badly what their issues are.

I haven't heard any utility come forward and testify as to what gains they are going to make from having this legislation passed. But I see power plants that clearly can't compete at all being sold for 1.6 times their book value. So the market is finding some other values out there. I guess if I had my way there would be an auction and we would determine it that way. Short of that, I agree with the panel earlier this morning, with Ross Ain, mandate the States to deal with it fairly because it is the States that have to deal with their local utility company and they also have to deal with the ratepayers who are going to pay the money in the stranded cost and they are better able to balance that than you here.

If I can turn to your second question and give a couple of examples. We have a laboratory. Massachusetts was the first State to deregulate. Not only did they deregulate and deal with stranded costs, but they said very efficient plants are exempt from a transition charge. So you could build these combined heat and power plants as a way to encourage it. That should have triggered a boom of efficient technology in Massachusetts. Instead, the State DEP, in enforcing the Clean Air Act, has announced that all new power plants will have to use a technology that reduces the NO_X down to 2 parts per million. On an output corrected basis, the average generating plant in Massachusetts puts out 500 parts per million

of NO_X. If I want to put in a plant that puts out 25 parts per million, I can't do it without adding 15 to 20 percent to my cost to take it down even lower. I don't think that is good public policy.

In your State if we want to put in a generating plant that would supply General Motors, we were blocked from doing that because the State has an anti flip-flop law that was designed to protect the regulated utilities from being preyed on by the coops, and they said you couldn't change suppliers.

I think Congress needs to override those laws everywhere. Fifteen States have laws which say that it is illegal for a nonutility to generate power, so nobody can generate the power. I think all of these things can be cleaned up in the Federal regulation. Thank you.

Ms. MCCARTHY. Mr. Chairman, may I pursue since the light is still green?

Mr. BARTON. Sure.

Ms. MCCARTHY. On the NO_X issue, I wanted to ask Mr. Agathen, since he knows what it might mean to consumers in this area for complying with the NO_X SIP call rule, what that real cost might be and what alternatives might help reduce emissions yet not impose such significant burdens on consumers? And, Mr. Casten, I appreciate your thoughts in raising that issue and pointing out the things that States have done that we might need to change at the Federal level if they fail to change them themselves. I would love to hear from Mr. Agathen.

Mr. AGATHEN. It is very hard for us to estimate what the costs for our customers will be because the details are not sorted out yet. But I think we are talking in the hundreds of millions of dollar range is our best estimate, with a fairly wide range of uncertainty around those numbers.

Ms. MCCARTHY. Thank you. Mr. Cohen, do you want to comment at all?

Mr. COHEN. I have no reason to dispute the range that Mr. Agathen described. I would note that there are going to be considerable benefits in terms of reduced asthma treatment costs and treatment for other respiratory diseases in Missouri and downwind resulting from those emission controls. So one can't simply look at the cost side of the equation.

Ms. MCCARTHY. One ought to look at where the wind goes when we are trying to resolve the issue. I thank you, Mr. Chairman.

Mr. BARTON. Thank you. Is Mr. Sawyer out in the annex? While we are waiting on Mr. Sawyer, are any of you aware of any State that has deregulated that has allowed stranded cost recovery where the stranded costs ended up being higher than they were estimated? My information is that they are turning out to be lower? Everybody is nodding their head.

Mr. CODEY. I believe they are lower.

Mr. AGATHEN. Yes.

Mr. BARTON. So are you aware of any State where stranded costs have been higher than the estimate?

Ms. O'NEILL. Not in the estimate prepared by utilities.

Mr. BARTON. Even the environmental consumer groups would have estimates.

Mr. Hall would you like to be recognized for 5 minutes.

Mr. HALL. If I might, I will submit questions in writing.

Mr. BARTON. Former Chairman Dingell, if he were to return quickly, we will let him have a second round right now.

Mr. BARTON. I want to apologize to Mr. Casten. Sometimes I get carried away, but my Democrats will be even more surprised that there was a Republican who gave a fact-based answer, so it works both ways here.

Ms. MCCARTHY. I just wondered if any of the panelists would like to add anything or share any other thoughts with us. Mr. Codey.

Mr. CODEY. Yes. If I could, previously a question was asked about increased output from coal plants and no more coal plants will be built.

I think one has to look at the capacity factors of plants and forced outage rates. One of the things that we found as we entered competition, we find ways to make our plants more available than they used to be available. Our forced outage rates have gone from the 10 to 13 percent rate down to 5 percent. So you will find ways to do outages quicker because of competition. You will have your plants available more. They will be available to run more coal plants in the Midwest and other places, and they will as a result, if they are not as clean as other plants, put more pollution in the air.

Mr. BARTON. Does Mr. Dingell wish to be recognized.

Mr. DINGELL. Yes, Mr. Chairman.

First, I would like to refer quickly because of the limited time and I would ask you a yes or no question.

The public benefits fund would be funded by essentially a tax on electrical utility users. Should that tax be returned to the utility in the amount that is paid by the ratepayers or should it be paid generally according to some other formula, yes or no?

Mr. CODEY. In New Jersey the societal benefits charge is a kilowatt hour charge that is paid by all customers to provide for conservation, low income assistance. It is paid by all customers who use a kilowatt hour.

Mr. DINGELL. Is the answer then from the silence of the panel that you don't know?

Mr. COHEN. That would be my answer.

Mr. DINGELL. The public benefits fund, can you tell me how we would ensure that it would not be raided by the appropriators and the budgeteers who have been raiding every fund, the highway trust fund, the nuclear waste fund, the fund we set up to assure universal service to telephone users, how do we protect that—and the Social Security and Medicare trust fund, how do we protect that against the depredations of the appropriators?

Ms. O'NEILL. The devil is in the details on all of these programs. There are ways of making sure that the purposes are accomplished.

Mr. DINGELL. In other words, you trust the appropriators. Terrible mistake.

Mr. NIEMIEC. I don't see a way to handle the issue that you are raising. Hence, you wouldn't have the systems benefit charge or other taxes.

Mr. COHEN. I would be happy to respond in writing with folks who have thought a lot more about that than I have.

Mr. AGATHEN. I have no suggestions on how to protect it.

Mr. CODEY. I know in New Jersey that you can have legislation which precludes the legislature from invading particular funds.

Mr. DINGELL. The last panelist?

Mr. CASTEN. I don't think that it is a good way to accomplish its ends. We don't need it.

Mr. DINGELL. Mr. Casten and Mr. Codey, you have plants in what countries?

Mr. CASTEN. We are primarily in the United States, with two in Canada and one in Mexico.

Mr. DINGELL. And you, sir?

Mr. CODEY. We have 15,000 megawatts of capacity, 10,000 in New Jersey and Pennsylvania, 5,000 in countries such as Chile, India, Argentina, China, et cetera.

Mr. DINGELL. Do your plants in other countries meet U.S. air quality standards?

Mr. CASTEN. Our plants exceed U.S. air quality standards everywhere.

Mr. CODEY. I am not sure of the answer to that question.

Mr. DINGELL. Yes or no.

Mr. CODEY. I am not sure of the answer. I know that we meet existing standards in the countries where we are located, and some of them were existing plants that we purchased.

Mr. DINGELL. Now—well, Mr. Chairman, I think those are the questions. I would repeat my request to the Chair that I be permitted to submit written questions.

Mr. BARTON. Without objection. All members not present will have the requisite number of days to submit questions.

Are there any other members present who wish to ask this panel questions? Seeing none, the Chair would recognize himself for just a few wrap up questions.

Congressman Hall, did you want to ask a question?

Mr. HALL. No. I will override my staff right now.

Mr. BARTON. Absent a renewable mandate or an environmental mandate, and keep in mind that we don't have a bill yet and there are a number of bills out there but the subcommittee has not yet put together a subcommittee print, but if we choose not to follow the administration's lead and we put some disclosure requirements in, what in your estimate is the natural level of renewable demand for energy in this country if you use the definition that is in the administration's bill, which is primarily, you know, wind, solar, biomass, perhaps small hydroelectric? The administration has a 7.5 percent mandate. Using their same definition if we don't have a mandate, what is kind of the market level for renewable?

We will just go right down the table. If you don't have an estimate, that is fine, too. But you are a fairly informed group.

Ms. O'NEILL. As I mentioned before, I think there is significant potential for lots of customers wanting to choose cleaner and renewable resources. Exactly what that is in percentages is not clear, but certainly well above the amount of renewables that we currently have.

Mr. BARTON. So above 1 or 2 percent but probably less than the 20 percent that you alluded to?

Ms. O'NEILL. That is correct.

Mr. NIEMIEC. Right now there is 2.3 percent in the United States, and I think the natural, based on the work that we did at the Texas Energy Coordination Council in asking people about another natural 3 percent, and that sounds low relative to the number that Ms. O'Neill mentioned, so I would say natural 5 to 6 percent.

Mr. COHEN. I don't have an estimate.

Mr. AGATHEN. From what I understand, it is in those ranges, 2 to 3 percent. The market will tell us what it is.

Mr. CODEY. We have a requirement in New Jersey going up to 4 percent. I believe that that is aggressive in terms of a free market being able to produce those kinds of numbers, 4 to 5 percent maximum.

Mr. BARTON. Mr. Casten?

Mr. CASTEN. The renewable market is rapidly ramping up and I have trouble with the dynamics because they are getting cheaper virtually every month. With environmental credits, I think you will get to the 7 percent. Without environmental credits, you will probably be in the 3 percent range.

Ms. O'NEILL. Mr. Chairman, if I might, I think we have barely begun to explore the potential for the demand for renewable energy. Consumers are very unaware of where their energy comes from and what the environmental consequences are of electric generation, and that the potential goes way up when that kind of education effort is applied.

Mr. BARTON. The second part to that question, there is obviously a segment of the consumer market that will pay market or above market for renewable, however you define it. So that the second part of the question is let's reverse it. Let's assume that we put a mandate in somewhere in the neighborhood of the administration's 7.5 percent. What is the cost to meet that mandate? In other words, are there entrepreneurs out there that will put in the kind of power that is mandated, and if so, what will that cost to do?

I am kind of reversing it, but it is the same way. Take an extreme case and we mandate it at 50 percent, what would it cost to get the 50 percent? Obviously we are not going to put that kind of a mandate. Let's start with Mr. Casten.

Mr. CASTEN. Mr. Chairman, because the administration excluded hydro, which is a mistake, I don't believe 7.5 percent will come forward and the price will go to the cap which is I think 1.5 cents a kilowatt hour.

Mr. BARTON. So you think a price cap will preclude reaching the percentage mandate?

Mr. CASTEN. I am not sure how to build 7.5 percent in 10 years without hydro. And so I think the price will end up being at the price cap all of the time.

Mr. CODEY. I agree with that statement.

Mr. AGATHEN. I hope that I am answering this. I think the underlying pinnings of restructuring is that we are trying to reduce price and give customers choice. The renewables portfolio goes totally opposite on both of those principles. So I think you have to wait and see what the market is going to do in reaction to that. If you mandate it, you are never going to know what the true market is going to do with it.

Mr. COHEN. I don't have an answer.

Mr. NIEMIEC. As I stated earlier, if you mandated 7.5 percent, incrementally that is about 55 percent of the market during those 10 years and I don't think that can be achieved——

Mr. BARTON. You mean 55 percent of the expected increase in demand?

Mr. NIEMIEC. Yes. Would have to be built with renewables, and I don't think that we are capable of doing that. In terms of cost if you had a more gradual approach, I think you are looking at 3 to 4 cents a kilowatt hour above a base cost of incremental of around 3.5 cents on a combined cycle natural gas.

Mr. BARTON. Ms. O'Neill?

Ms. O'NEILL. I don't have an additional view to provide on that.

Mr. BARTON. I want to thank the panel for being here today. Our next hearing is next Wednesday. It is on consumer protection. Our next working group meeting is next Tuesday at 4:30. The former distinguished chairman of the Subcommittee on Energy and Power, Mr. Phil Sharp, who was a member of the full committee and this subcommittee for a number of years, will be our guest at our working group. I thank the witnesses, and the hearing is adjourned.

[Whereupon, at 2:50 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

RESPONSES OF PAUL AGATHEN, SENIOR VICE PRESIDENT, ENERGY SUPPLY SERVICES, TO QUESTIONS OF HON. JOHN D. DINGELL

General Questions

Question 1. Do you support federal legislation to mandate retail competition by a date certain? (Please answer "Yes" or "No.")

Response. No.

Question 2. Should there be an explicit environmental component of restructuring legislation? (Please answer "Yes" or "No.")

Response. No.

Emissions

Question 3. Do you believe that federal restructuring legislation is the best avenue for curing the problems recently raised by the courts with the Clean Air Act? (Please answer "Yes" or "No.")

Response. No.

Question 4. Do you support the inclusion of emissions control legislation as part of a restructuring bill? (Please answer "Yes" or "No.")

Response. No.

Question 5. Several parties have suggested that federal restructuring legislation contain language to cap utility emissions and trade emissions allowances. Under such a program, utilities would be assigned allowances based upon their emission rate per megawatt hour of electricity generated. This raises questions about the types of generation sources that should be allowed to earn credit in such a program. In order to clarify, please specify whether the following types of generation should be credited in such a cap and trade program:

a) waste-to-energy facilities be included? (Please answer "Yes" or "No.")

Response. Yes.

b) nuclear generating facilities be included? (Please answer "Yes" or "No.")

Response. Yes.

c) small hydroelectric generating facilities be included? (Please answer "Yes" or No.")

Response. Yes.

Question 6. If emissions control language was included in restructuring legislation, should such language regulate emissions of:

a) NO_X? (Please answer "Yes" or "No.")

Response. No.

b) SO_X? (Please answer "Yes" or "No.")

Response. No.

c) mercury? (Please answer "Yes" or "No.")

Response. No.
d) carbon? (Please answer "Yes" or "No.")
Response. No.

Renewable Resources

Question 7. Should federal restructuring legislation contain a Renewable Portfolio Standard? (Please answer "Yes" or "No.")
Response. No.
Question 8. What percent of a providers' electricity supply should be required to come from renewable resources? (Please answer with a number between 0 and 100 percent.)
Response. 0.
Question 9. Should the required percentage increase over time? (Please answer "Yes" or "No.")
Response. No.
Question 10. Should a Renewable Portfolio Standard sunset after a number of years? (Please answer "Yes" or "No.")
Response. Yes.
Question 11. If a Renewable Portfolio Standard is included in federal restructuring legislation, should it apply to the Tennessee Valley Authority, the federal Power Marketing Administrations, municipal utilities and rural cooperatives if it is required for other electricity suppliers? (Please answer "Yes" or "No.")
Response. Yes.
Question 12. Should hydroelectric facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")
Response. Yes.
Question 13. Should waste-to-energy facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")
Response. Yes.

Green Labeling

Question 14. Should restructuring legislation require an electricity provider to disclose information about its generation sources and their impact on the environment? (Please answer "Yes" or No.")
Response. No.
Question 15. Should providers be required to disclose to customers the percentages of each fuel used in generating the electricity being offered for sale? (Please answer "Yes" or "No.")
Response. No.
Question 16. Should providers be required to disclose data about the emissions associated with the electricity being offered for sale? (Please answer "Yes" or "No.")
Response. No.
Question 17. Should providers be required to disclose information about other environmental impacts such as fish mortality? (Please answer "Yes" or "No.")
Response. No.
Question 18. Who should bear the burden of supplying information to retail customers: marketers, generators, or distributors? (Please choose one.)
Response. No response.
Question 19. Who should enforce environmental disclosure provisions: The Environmental Protection Agency, The Department of Energy, The Federal Energy Regulatory Commission, The Federal Trade Commission, or individual states? (Please choose one.)
Response. DOE.
Question 20. What types of penalties are appropriate for violations of any "green labeling" requirement?
Response. Fines.

Public Benefits Fund

Question 21. While many states require utilities to undertake programs that promote energy efficiency, the fate of these programs is unclear in a competitive electricity market. One proposed solution is a charge that would be placed on all customers and used to fund energy efficiency and conservation programs. For example, the Administration's legislation proposes that the revenue from such a charge be placed into a "public benefits fund" that would be disbursed to states on a matched basis so that the states can pay for low income, energy efficiency and conservation programs. This prompts a number of questions:
a) Should the agency administering the charge be authorized to adjust it? (Please answer "Yes" or "No.")
Response. No.

b) In your opinion, would some states benefit from a public benefits fund more than others? (Please answer "Yes" or "No.")
Response. Yes.
c) In your opinion, would some states pay more into a public benefits fund than others? (Please answer "Yes" or "No.")
Response. Yes.

RESPONSES OF DONALD W. NIEMIEC, VICE PRESIDENT, UNION PACIFIC RESOURCES ENERGY MARKETING, TO QUESTIONS OF HON. JOHN D. DINGELL

General Questions

Question 1. Do you support federal legislation to mandate retail competition by a date certain? (Please answer "Yes" or "No.")
Response. Yes, but we do not feel that a date certain is an imperative part of a federal restructuring legislation.
Question 2. Should there be an explicit environmental component of restructuring legislation? (Please answer "Yes" or "No.")
Response. No, we feel that all environmental legislation should be separate and distinct from electric restructuring legislation.

Emissions

Question 3. Do you believe that federal restructuring legislation is the best avenue for curing the problems recently raised by the courts with the Clean Air Act? (Please answer "Yes" or "No.")
Response. No.
Question 4. Do you support the inclusion of emissions control legislation as part of a restructuring bill? (Please answer "Yes" or "No.")
Response. No.
Question 5. Several parties have suggested that federal restructuring legislation contain language to cap utility emissions and trade emissions allowances. Under such a program, utilities would be assigned allowances based upon their emission rate per megawatt hour of electricity generated. This raises questions about the types of generation sources that should be allowed to earn credit in such a program. In order to clarify, please specify whether the following types of generation should be credited in such a cap and trade program:
a) waste-to-energy facilities be included? (Please answer "Yes" or "No.")
b) nuclear generating facilities be included? (Please answer "Yes" or "No.")
c) small hydroelectric generating facilities be included? (Please answer "Yes" or No.")
Response. The Natural Gas Supply Association strongly supports fuel neutral, output-based standards. We also support market-based approaches (emissions trading) as a mechanism for implementing regulatory programs. We do not, however, feel that it is necessary to address air quality concerns in electric restructuring legislation.
Question 6. If emissions control language was included in restructuring legislation, should such language regulate emissions of:
a) NO_X? (Please answer "Yes" or "No.")
Response. Yes.
b) SO_X? (Please answer "Yes" or "No.")
Response. No.
c) mercury? (Please answer "Yes" or "No.")
Response. Yes.
d) carbon? (Please answer "Yes" or "No.")
Response. Yes.

Renewable Resources

Question 7. Should federal restructuring legislation contain a Renewable Portfolio Standard? (Please answer "Yes" or "No.")
Response. No.
Question 8. What percent of a providers' electricity supply should be required to come from renewable resources? (Please answer with a number between 0 and 100 percent.)
Response. 0.
Question 9. Should the required percentage increase over time? (Please answer "Yes" or "No.")
Response. No.

Question 10. Should a Renewable Portfolio Standard sunset after a number of years? (Please answer "Yes" or "No.")

Response. Yes.

Question 11. If a Renewable Portfolio Standard is included in federal restructuring legislation, should it apply to the Tennessee Valley Authority, the federal Power Marketing Administrations, municipal utilities and rural cooperatives if it is required for other electricity suppliers? (Please answer "Yes" or "No.")

Response. Yes.

Question 12. Should hydroelectric facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")

Response. Yes.

Question 13. Should waste-to-energy facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")

Response. No.

Green Labeling

Question 14. Should restructuring legislation require an electricity provider to disclose information about its generation sources and their impact on the environment? (Please answer "Yes" or No.")

Response. Yes.

Question 15. Should providers be required to disclose to customers the percentages of each fuel used in generating the electricity being offered for sale? (Please answer "Yes" or "No.")

Response. Yes.

Question 16. Should providers be required to disclose data about the emissions associated with the electricity being offered for sale? (Please answer "Yes" or "No.")

Response. Yes.

Question 17. Should providers be required to disclose information about other environmental impacts such as fish mortality? (Please answer "Yes" or "No.")

Response. No.

Question 18. Who should bear the burden of supplying information to retail customers: marketers, generators, or distributors? (Please choose one.)

Response. With increased focus in the consuming public on environmental friendly solutions to air quality concerns, it would appear that an electricity marketer may wish to advertise its commitment to or purchases from generation sources such as renewables or gas-fired plants. However, requiring a marketer to report the source of generation may be difficult, especially if the marketer is purchasing electricity from a pool or if electricity is traded multiple times prior to being pooled and sourced to market. Note that many electricity marketers may not own generation plants, and the generators are the only ones that actually collect the data.

Question 19. Who should enforce environmental disclosure provisions: The Environmental Protection Agency, The Department of Energy, The Federal Energy Regulatory Commission, The Federal Trade Commission, or individual states? (Please choose one.)

Response. The disclosure provision should be integrated with existing reporting requirements. A review of state, FERC, and DOE reporting requirements should identify the appropriate entity to enforce disclosure provisions that minimizes additional administrative burden.

Question 20. What types of penalties are appropriate for violations of any "green labeling" requirement?

Response. Fines.

Public Benefits Fund

Question 21. While many states require utilities to undertake programs that promote energy efficiency, the fate of these programs is unclear in a competitive electricity market. One proposed solution is a charge that would be placed on all customers and used to fund energy efficiency and conservation programs. For example, the Administration's legislation proposes that the revenue from such a charge be placed into a "public benefits fund" that would be disbursed to states on a matched basis so that the states can pay for low income, energy efficiency and conservation programs. This prompts a number of questions:

a) Should the agency administering the charge be authorized to adjust it? (Please answer "Yes" or "No.")

b) In your opinion, would some states benefit from a public benefits fund more than others? (Please answer "Yes" or "No.")

c) In your opinion, would some states pay more into a public benefits fund than others? (Please answer "Yes" or "No.")

Response. We do not support a public benefits fund. To the extent that the government selects a public benefits fund as a desirable element in legislation, then that fund should be clearly labeled and used for a single purpose. For instance, many states are already considering a public benefits fund in rates which would provide some monies for serving low income users where need exists. That type of fund should be kept separate from conservation or energy efficiency programs.

RESPONSES OF LAWRENCE R. CODEY, PRESIDENT AND CHIEF OPERATING OFFICER, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, TO QUESTIONS OF HON. JOHN D. DINGELL

General Questions

Question 1. Do you support federal legislation to mandate retail competition by a date certain? (Please answer "Yes" or "No.")

Response. Yes.

Question 2. Should there be an explicit environmental component of restructuring legislation? (Please answer "Yes" or "No.")

Response. Yes.

Emissions

Question 3. Do you believe that federal restructuring legislation is the best avenue for curing the problems recently raised by the courts with the Clean Air Act? (Please answer "Yes" or "No.")

Response. Yes.

Question 4. Do you support the inclusion of emissions control legislation as part of a restructuring bill? (Please answer "Yes" or "No.")

Response. Yes. Specifically, a nation-wide output-based, fuel neutral emissions cap-and-trade program covering nitrogen oxide, sulfur dioxide, and carbon dioxide.

Question 5. Several parties have suggested that federal restructuring legislation contain language to cap utility emissions and trade emissions allowances. Under such a program, utilities would be assigned allowances based upon their emission rate per megawatt hour of electricity generated. This raises questions about the types of generation sources that should be allowed to earn credit in such a program. In order to clarify, please specify whether the following types of generation should be credited in such a cap and trade program:

a) waste-to-energy facilities be included? (Please answer "Yes" or "No.")

Response. Yes.

b) nuclear generating facilities be included? (Please answer "Yes" or "No.")

Response. Yes.

c) small hydroelectric generating facilities be included? (Please answer "Yes" or No.")

Response. Yes.

Question 6. If emissions control language was included in restructuring legislation, should such language regulate emissions of:

a) NO_X? (Please answer "Yes" or "No.")

Response. Yes.

b) SO_X? (Please answer "Yes" or "No.")

Response. Yes.

c) mercury? (Please answer "Yes" or "No.")

Response. yes, pending outcome of EPA's study of utility mercury emissions.

d) carbon? (Please answer "Yes" or "No.")

Response. Yes.

Renewable Resources

Question 7. Should federal restructuring legislation contain a Renewable Portfolio Standard? (Please answer "Yes" or "No.")

Response. Yes. It should be noted, however, that a properly set cap-and-trade system for power plant emissions, as described above, will also promote the development of renewable energy resources, as zero-emission renewable resources can "balance" emissions from fossil plants.

Question 8. What percent of a providers' electricity supply should be required to come from renewable resources? (Please answer with a number between 0 and 100 percent.)

Response. The recently enacted New Jersey electric restructuring plan mandates what I believe is a reasonable and achievable renewables portfolio requirement. It starts at 2.5% and increases to 6.5% over 13 years.

Question 9. Should the required percentage increase over time? (Please answer "Yes" or "No.")

Response. Not necessarily. Traded renewable credits could be used to the same effect, i.e., to phase in a portfolio standard.

Question 10. Should a Renewable Portfolio Standard sunset after a number of years? (Please answer "Yes" or "No.")

Response. Yes, but only if it's clear that a robust renewables marketplace has been established.

Question 11. If a Renewable Portfolio Standard is included in federal restructuring legislation, should it apply to the Tennessee Valley Authority, the federal Power Marketing Administrations, municipal utilities and rural cooperatives if it is required for other electricity suppliers? (Please answer "Yes" or "No.")

Response. Yes.

Question 12. Should hydroelectric facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")

Response. Yes.

Question 13. Should waste-to-energy facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")

Response. Yes.

Green Labeling

Question 14. Should restructuring legislation require an electricity provider to disclose information about its generation sources and their impact on the environment? (Please answer "Yes" or No.")

Response. Yes.

Question 15. Should providers be required to disclose to customers the percentages of each fuel used in generating the electricity being offered for sale? (Please answer "Yes" or "No.")

Response. Yes.

Question 16. Should providers be required to disclose data about the emissions associated with the electricity being offered for sale? (Please answer "Yes" or "No.")

Response. Yes.

Question 17. Should providers be required to disclose information about other environmental impacts such as fish mortality? (Please answer "Yes" or "No.")

Response. Yes, provided such information can be quantified on a scientifically sound basis and can be readily compared to an accepted benchmark. For example, raw data on fish mortality is meaningless absent the context of the natural mortality rate for any given species in the body of water under study.

Question 18. Who should bear the burden of supplying information to retail customers: marketers, generators, or distributors? (Please choose one.)

Response. The entity that makes the retail sale to end-use customers, which, in the formulation of this question, would be marketers. Note that tracking of fuel source and environmental characteristics along the distribution chain will enable marketers to report such information to customers.

Question 19. Who should enforce environmental disclosure provisions: The Environmental Protection Agency, The Department of Energy, The Federal Energy Regulatory Commission, The Federal Trade Commission, or individual states? (Please choose one.)

Response. The Federal Trade Commission, but not to the exclusion of, i.e., not to preempt, individual states with more stringent or comprehensive disclosure provisions.

Question 20. What types of penalties are appropriate for violations of any "green labeling" requirement?

Response. Monetary fines; suspension or revocation of a marketer's license.

Public Benefits Fund

Question 21. While many states require utilities to undertake programs that promote energy efficiency, the fate of these programs is unclear in a competitive electricity market. One proposed solution is a charge that would be placed on all customers and used to fund energy efficiency and conservation programs. For example, the Administration's legislation proposes that the revenue from such a charge be placed into a "public benefits fund" that would be disbursed to states on a matched basis so that the states can pay for low income, energy efficiency and conservation programs. This prompts a number of questions:

a) Should the agency administering the charge be authorized to adjust it? (Please answer "Yes" or "No.")

Response. Yes.

b) In your opinion, would some states benefit from a public benefits fund more than others? (Please answer "Yes" or "No.")
Response. Not on a per capita basis.
c) In your opinion, would some states pay more into a public benefits fund than others? (Please answer "Yes" or "No.")
Response. Yes, to the extent that higher population and more intense energy use prompt higher collection of a public benefits charge. Also some states are imposing their own public, or societal benefits charges for local purposes.

RESPONSES OF ARMOND COHEN, DIRECTOR, CLEAN AIR TASK FORCE, TO QUESTIONS OF HON. JOHN D. DINGELL

Preliminary note: Despite best efforts, it is not possible for the respondent to provide a "yes" or "no" answer in many cases, as requested, either because our organization has not taken a position on the issue, the question is outside the domain of our expertise, or because the question makes assumptions that require elaboration.

General Questions

Question 1. Do you support federal legislation to mandate retail competition by a date certain? (Please answer "Yes" or "No.")
Response. No position.
Question 2. Should there be an explicit environmental component of restructuring legislation? (Please answer "Yes" or "No.")
Response. Yes.

Emissions

Question 3. Do you believe that federal restructuring legislation is the best avenue for curing the problems recently raised by the courts with the Clean Air Act? (Please answer "Yes" or "No.")
Response. The answer depends what other avenues are practically available.
Question 4. Do you support the inclusion of emissions control legislation as part of a restructuring bill? (Please answer "Yes" or "No.")
Response. Yes.
Question 5. Several parties have suggested that federal restructuring legislation contain language to cap utility emissions and trade emissions allowances. Under such a program, utilities would be assigned allowances based upon their emission rate per megawatt hour of electricity generated. This raises questions about the types of generation sources that should be allowed to earn credit in such a program. In order to clarify, please specify whether the following types of generation should be credited in such a cap and trade program:
a) waste-to-energy facilities be included? (Please answer "Yes" or "No.")
Response. No.
b) nuclear generating facilities be included? (Please answer "Yes" or "No.")
Response. No.
c) small hydroelectric generating facilities be included? (Please answer "Yes" or No.")
Response. Organization has taken no position.
Question 6. If emissions control language was included in restructuring legislation, should such language regulate emissions of:
a) NO_X? (Please answer "Yes" or "No.")
Response. Yes.
b) SO_X? (Please answer "Yes" or "No.")
Response. Yes.
c) mercury? (Please answer "Yes" or "No.")
Response. Yes.
d) carbon? (Please answer "Yes" or "No.")
Response. Yes.

Renewable Resources

Question 7. Should federal restructuring legislation contain a Renewable Portfolio Standard? (Please answer "Yes" or "No.")
Response. Yes.
Question 8. What percent of a providers' electricity supply should be required to come from renewable resources? (Please answer with a number between 0 and 100 percent.)
Response. No position.
Question 9. Should the required percentage increase over time? (Please answer "Yes" or "No.")

Response. No position.

Question 10. Should a Renewable Portfolio Standard sunset after a number of years? (Please answer "Yes" or "No.")

Response. No position.

Question 11. If a Renewable Portfolio Standard is included in federal restructuring legislation, should it apply to the Tennessee Valley Authority, the federal Power Marketing Administrations, municipal utilities and rural cooperatives if it is required for other electricity suppliers? (Please answer "Yes" or "No.")

Response. No position.

Question 12. Should hydroelectric facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")

Response. No position.

Question 13. Should waste-to-energy facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")

Response. No.

Green Labeling

Question 14. Should restructuring legislation require an electricity provider to disclose information about its generation sources and their impact on the environment? (Please answer "Yes" or No.")

Response. Yes.

Question 15. Should providers be required to disclose to customers the percentages of each fuel used in generating the electricity being offered for sale? (Please answer "Yes" or "No.")

Response. Yes.

Question 16. Should providers be required to disclose data about the emissions associated with the electricity being offered for sale? (Please answer "Yes" or "No.")

Response. Yes.

Question 17. Should providers be required to disclose information about other environmental impacts such as fish mortality? (Please answer "Yes" or "No.")

Response. No position.

Question 18. Who should bear the burden of supplying information to retail customers: marketers, generators, or distributors? (Please choose one.)

Response. No position.

Question 19. Who should enforce environmental disclosure provisions: The Environmental Protection Agency, The Department of Energy, The Federal Energy Regulatory Commission, The Federal Trade Commission, or individual states? (Please choose one.)

Response. No position.

Question 20. What types of penalties are appropriate for violations of any "green labeling" requirement?

Response. No position.

Public Benefits Fund

Question 21. While many states require utilities to undertake programs that promote energy efficiency, the fate of these programs is unclear in a competitive electricity market. One proposed solution is a charge that would be placed on all customers and used to fund energy efficiency and conservation programs. For example, the Administration's legislation proposes that the revenue from such a charge be placed into a "public benefits fund" that would be disbursed to states on a matched basis so that the states can pay for low income, energy efficiency and conservation programs. This prompts a number of questions:

a) Should the agency administering the charge be authorized to adjust it? (Please answer "Yes" or "No.")

Response. No position.

b) In your opinion, would some states benefit from a public benefits fund more than others? (Please answer "Yes" or "No.")

Response. No expertise to answer.

c) In your opinion, would some states pay more into a public benefits fund than others? (Please answer "Yes" or "No.")

Response. No expertise to answer.

RESPONSES OF KAREN O'NEILL, VICE PRESIDENT, NEW MARKETS, GREEN MOUNTAIN ENERGY, TO QUESTIONS OF HON. JOHN D. DINGELL

General Questions

Question 1. Do you support federal legislation to mandate retail competition by a date certain? (Please answer "Yes" or "No.")

Response. Yes.

Question 2. Should there be an explicit environmental component of restructuring legislation? (Please answer "Yes" or "No.")

Response. Yes.

Emissions

Question 3. Do you believe that federal restructuring legislation is the best avenue for curing the problems recently raised by the courts with the Clean Air Act? (Please answer "Yes" or "No.")

Response. No opinion.

Question 4. Do you support the inclusion of emissions control legislation as part of a restructuring bill? (Please answer "Yes" or "No.")

Response. Yes. It is a desirable, though not necessary, component of restructuring legislation.

Question 5. Several parties have suggested that federal restructuring legislation contain language to cap utility emissions and trade emissions allowances. Under such a program, utilities would be assigned allowances based upon their emission rate per megawatt hour of electricity generated. This raises questions about the types of generation sources that should be allowed to earn credit in such a program. In order to clarify, please specify whether the following types of generation should be credited in such a cap and trade program:

a) waste-to-energy facilities be included? (Please answer "Yes" or "No.")

Response. No.

b) nuclear generating facilities be included? (Please answer "Yes" or "No.")

Response. No.

c) small hydroelectric generating facilities be included? (Please answer "Yes" or No.")

Response. Yes.

Question 6. If emissions control language was included in restructuring legislation, should such language regulate emissions of:

a) NO_X? (Please answer "Yes" or "No.")

Response. Yes.

b) SO_X? (Please answer "Yes" or "No.")

Response. Yes.

c) mercury? (Please answer "Yes" or "No.")

Response. No.

d) carbon? (Please answer "Yes" or "No.")

Response. Yes.

Renewable Resources

Question 7. Should federal restructuring legislation contain a Renewable Portfolio Standard? (Please answer "Yes" or "No.")

Response. Yes, but with an important qualification: It should be carefully structured to be compatible with, and support, a competitive market for renewable resources. Guidelines for such an RPS should include the following:

- The RPS should be based on energy sold, not capacity available.
- The sources of generation that would qualify for an RPS should include: wind, biomass, sun, geothermal, wave and tidal.
- The RPS should be subject to an appropriate limit on costs and should incorporate the use of a credit system.
- If the RPS applies to suppliers rather than generators, the RPS standard should apply to all product offerings, not merely the overall mix of generation provided by the supplier.

Question 8. What percent of a providers' electricity supply should be required to come from renewable resources? (Please answer with a number between 0 and 100 percent.)

Response. There is no magic number; what percentage is reasonable will vary depending on the qualifying resources. It should start out low, based on an assessment of currently available resources, and ramp up over time, to perhaps 5-10 percent between 2010 and 2015.

Question 9. Should the required percentage increase over time? (Please answer "Yes" or "No.")

Response. Yes. See response to Question 8.

Question 10. Should a Renewable Portfolio Standard sunset after a number of years? (Please answer "Yes" or "No.")

Response. Yes.

Question 11. If a Renewable Portfolio Standard is included in federal restructuring legislation, should it apply to the Tennessee Valley Authority, the federal Power Marketing Administrations, municipal utilities and rural cooperatives if it is required for other electricity suppliers? (Please answer "Yes" or "No.")

Response. Yes.

Question 12. Should hydroelectric facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")

Response. No for purposes of an RPS, since the promise of new hydro is not the same as that of other new renewable resources. Hydro should be considered a renewable resource for disclosure purposes, however.

Question 13. Should waste-to-energy facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")

Response. Landfill gas facilities should qualify; municipal solid waste incineration facilities should not quality.

Green Labeling

Question 14. Should restructuring legislation require an electricity provider to disclose information about its generation sources and their impact on the environment? (Please answer "Yes" or No.")

Response. Yes.

Question 15. Should providers be required to disclose to customers the percentages of each fuel used in generating the electricity being offered for sale? (Please answer "Yes" or "No.")

Response. Yes.

Question 16. Should providers be required to disclose data about the emissions associated with the electricity being offered for sale? (Please answer "Yes" or "No.")

Response. Yes.

Question 17. Should providers be required to disclose information about other environmental impacts such as fish mortality? (Please answer "Yes" or "No.")

Response. No.

Question 18. Who should bear the burden of supplying information to retail customers: marketers, generators, or distributors? (Please choose one.)

Response. Marketers, including utilities acting as default service providers.

Question 19. Who should enforce environmental disclosure provisions: The Environmental Protection Agency, The Department of Energy, The Federal Energy Regulatory Commission, The Federal Trade Commission, or individual states? (Please choose one.)

Response. The Federal Trade Commission is probably the appropriate agency to charge with enforcement.

Question 20. What types of penalties are appropriate for violations of any "green labeling" requirement?

Response. Fines and injunctive relief

Public Benefits Fund

Question 21. While many states require utilities to undertake programs that promote energy efficiency, the fate of these programs is unclear in a competitive electricity market. One proposed solution is a charge that would be placed on all customers and used to fund energy efficiency and conservation programs. For example, the Administration's legislation proposes that the revenue from such a charge be placed into a "public benefits fund" that would be disbursed to states on a matched basis so that the states can pay for low income, energy efficiency and conservation programs. This prompts a number of questions:

a) Should the agency administering the charge be authorized to adjust it? (Please answer "Yes" or "No.")

Response. Probably not.

b) In your opinion, would some states benefit from a public benefits fund more than others? (Please answer "Yes" or "No.")

Response. No opinion.

c) In your opinion, would some states pay more into a public benefits fund than others? (Please answer "Yes" or "No.")

Response. Yes.

RESPONSES OF THOMAS R. CASTEN, PRESIDENT AND CEO, TRIGEN ENERGY CORPORATION, TO QUESTIONS OF HON. JOHN D. DINGELL

General Questions

Question 1. Do you support federal legislation to mandate retail competition by a date certain? (Please answer "Yes" or "No.")

Response. Yes.

Question 2. Should there be an explicit environmental component of restructuring legislation? (Please answer "Yes" or "No.")

Response. Yes.

Emissions

Question 3. Do you believe that federal restructuring legislation is the best avenue for curing the problems recently raised by the courts with the Clean Air Act? (Please answer "Yes" or "No.")

Response. Yes.

Question 4. Do you support the inclusion of emissions control legislation as part of a restructuring bill? (Please answer "Yes" or "No.")

Response. Yes.

Question 5. Several parties have suggested that federal restructuring legislation contain language to cap utility emissions and trade emissions allowances. Under such a program, utilities would be assigned allowances based upon their emission rate per megawatt hour of electricity generated. This raises questions about the types of generation sources that should be allowed to earn credit in such a program. In order to clarify, please specify whether the following types of generation should be credited in such a cap and trade program:

a) waste-to-energy facilities be included? (Please answer "Yes" or "No.")

Response. Yes.

b) nuclear generating facilities be included? (Please answer "Yes" or "No.")

Response. Yes.

c) small hydroelectric generating facilities be included? (Please answer "Yes" or No.")

Response. Yes.

Question 6. If emissions control language was included in restructuring legislation, should such language regulate emissions of:

a) NO_X? (Please answer "Yes" or "No.")

Response. Yes.

b) SO_X? (Please answer "Yes" or "No.")

Response. Yes.

c) mercury? (Please answer "Yes" or "No.")

Response. Yes.

d) carbon? (Please answer "Yes" or "No.")

Response. No.

Renewable Resources

Question 7. Should federal restructuring legislation contain a Renewable Portfolio Standard? (Please answer "Yes" or "No.")

Response. No.

Question 8. What percent of a providers' electricity supply should be required to come from renewable resources? (Please answer with a number between 0 and 100 percent.)

Response. Let pollution allowances be sold by renewables, leave market to decide.

Question 9. Should the required percentage increase over time? (Please answer "Yes" or "No.")

Response. No.

Question 10. Should a Renewable Portfolio Standard sunset after a number of years? (Please answer "Yes" or "No.")

Response. Yes.

Question 11. If a Renewable Portfolio Standard is included in federal restructuring legislation, should it apply to the Tennessee Valley Authority, the federal Power Marketing Administrations, municipal utilities and rural cooperatives if it is required for other electricity suppliers? (Please answer "Yes" or "No.")

Response. Yes.

Question 12. Should hydroelectric facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")

Response. Yes.

Question 13. Should waste-to-energy facilities qualify as renewable sources of electricity? (Please answer "Yes" or "No.")

Response. Yes.

Green Labeling

Question 14. Should restructuring legislation require an electricity provider to disclose information about its generation sources and their impact on the environment? (Please answer "Yes" or No.")

Response. Yes.

Question 15. Should providers be required to disclose to customers the percentages of each fuel used in generating the electricity being offered for sale? (Please answer "Yes" or "No.")

Response. Yes.

Question 16. Should providers be required to disclose data about the emissions associated with the electricity being offered for sale? (Please answer "Yes" or "No.")

Response. Yes.

Question 17. Should providers be required to disclose information about other environmental impacts such as fish mortality? (Please answer "Yes" or "No.")

Response. No.

Question 18. Who should bear the burden of supplying information to retail customers: marketers, generators, or distributors? (Please choose one.)

Response. Generators.

Question 19. Who should enforce environmental disclosure provisions: The Environmental Protection Agency, The Department of Energy, The Federal Energy Regulatory Commission, The Federal Trade Commission, or individual states? (Please choose one.)

Response. DOE.

Question 20. What types of penalties are appropriate for violations of any "green labeling" requirement?

Response. Apply previous laws.

Public Benefits Fund

Question 21. While many states require utilities to undertake programs that promote energy efficiency, the fate of these programs is unclear in a competitive electricity market. One proposed solution is a charge that would be placed on all customers and used to fund energy efficiency and conservation programs. For example, the Administration's legislation proposes that the revenue from such a charge be placed into a "public benefits fund" that would be disbursed to states on a matched basis so that the states can pay for low income, energy efficiency and conservation programs. This prompts a number of questions:

a) Should the agency administering the charge be authorized to adjust it? (Please answer "Yes" or "No.")

Response. No.

b) In your opinion, would some states benefit from a public benefits fund more than others? (Please answer "Yes" or "No.")

Response. No.

c) In your opinion, would some states pay more into a public benefits fund than others? (Please answer "Yes" or "No.")

Response. No.

CONSUMER PROTECTION ISSUES

WEDNESDAY, MAY 26, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON ENERGY AND POWER,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:03 a.m., in room 2123, Rayburn House Office Building, Hon. Joe Barton (chairman) presiding.

Members present: Representatives Barton, Stearns, Largent, Rogan, Shimkus, Shadegg, Pickering, Fossella, Bryant, Hall, McCarthy, Sawyer, Markey, Pallone, Gordon, and Dingell (ex officio).

Staff present: Cathy Van Way, majority counsel; Joe Kelliher, majority counsel; Ramsen Betfarhad, majority counsel; Jeff Krilla, majority counsel; Miriam Erickson, majority counsel, Donn Salvosa, legislative clerk; Sue Sheridan, minority counsel; and Rick Kessler, professional staff member.

Mr. BARTON. We are ready to start. All of our witnesses are here, but we need at least one more member for a quorum. So as soon as we get another member we will start. But the record will show the witnesses were all here at 10 a.m.

The subcommittee will come to order.

Today the Subcommittee on Energy and Power will examine the issue of consumer protection in a competitive electric market. This is either the fourth or the fifth in a series of hearings on the issue of electricity restructuring and deregulation. Competitive markets offer tremendous benefits to consumers in the form of lower prices, improved services, and technological innovation. That is true for electricity markets just as it is true for other markets. There is a need to ensure that consumers will not be denied those benefits by fly by night electric suppliers, by false and misleading advertising, and by unfair or deceptive trade practices. This is something that every member of the subcommittee agrees with.

I am pleased to see that the States that have so far opened their electricity retail markets have addressed consumer protection issues. These States have set licensing for criteria to keep out fly by night electric suppliers. They have established minimum consumer protection provisions and prohibited unfair trade practices. I want to commend in particular the State of California which has set tough licensing standards for electric suppliers. States have also taken vigorous enforcement action against electric suppliers that have acted unscrupulously. In one case, the State of California barred an electric supplier from selling electricity for unfair trade

practices. The State of Pennsylvania ordered utilities to cease running advertisements that it found were false and misleading.

The question before the subcommittee today is how to ensure consumer protection at the Federal level as we move toward a competitive electric market. I look forward to hearing from our witnesses about the adequacy of existing State and Federal consumer protection laws. States have consumer protection laws on the books that protect consumers from unfair or deceptive practices. Similarly, at the Federal level, the Federal Trade Commission regulates and oversees Federal unfair and deceptive trade practice regulations. We need to know whether these laws that are already on the books are adequate. If not, I hope that our witnesses will offer specific suggestions on how they can be strengthened.

Another question that needs to be discussed today is exactly what the interaction between the Federal and State roles should be. It is my view that the bulk of consumer protection issues should be addressed at the State level since the States have demonstrated that they have both the willingness and the authority to address consumer protection issues. However, there may be a need to include some consumer protection issues in a Federal comprehensive bill. Two consumer protection provisions that have been proposed in a number of bills already introduced are uniform Federal information disclosure standards and anti-slamming provisions. I am inclined to believe that these provisions should be included in a Federal restructuring bill. Electricity markets are regional in scope and a uniform information disclosure standard would be easier for consumers to understand than 50 separate standards. For the same reason that uniform disclosures are used in food products, appliances and consumer credit, it makes sense that they could be used in electricity if we deregulate at the Federal level. Also, given the experience in our telecommunications legislation that this subcommittee, the full committee, helped pass several years ago, I believe that Congress should include some provisions to prohibit slamming in electricity.

There is one other issue that we may need to address and that is the issue of consumer privacy. Utilities have a lot of information on consumers today, including the amount of electricity that we use, our billing history, our payment history. While I recognize that there is a need for some of that information to be disseminated so that consumers can receive competitive offers from alternative electricity suppliers, I believe that we must take every effort to protect legitimate consumer privacy. I don't think that the consumers' telephone numbers should be disclosed by utilities. If an electricity supplier in this new competitive environment in the State of Texas wants my business, they can send me a letter. I don't need any phone calls during supper time. I also think that consumer billing and payment history should not be disclosed or should only be disclosed under very unusual circumstances. If someone has had a problem paying their electricity bill, that is between themselves, their supplier, and possibly, the credit company. No one else has an automatic right to know, in my opinion.

Let me emphasize that consumer protection issues are not new issues. Unscrupulous firms have always tried to take advantage of unwary consumers. For decades, the States and the Federal Gov-

ernment have enacted legislation to protect consumers and those laws have been and need to be continuously and vigorously enforced. These issues may be new to the electricity business, but they are not new to the State and Federal consumer or to the State and Federal agencies in charge of overseeing these issues. I look forward to hearing from our witnesses today on the issue of consumer protection.

With that, I would like to recognize the distinguished ranking member, Congressman Hall, for an opening statement.

Mr. HALL. Mr. Chairman, thank you for your statement that adequately covered the subject, so I can be brief. Today's hearing on consumer protection issues will give us a wide variety of views on what needs to be done at the Federal level to ensure that electric utility customers have accurate and current information. They are going to have to be able make some decisions about electricity purchases in a restructured electric marketplace, so this testimony, combined with the testimony that I hope we will hear from State witnesses, ought to give us some idea of how we can divide this issue between what should be primarily State and what should be primarily Federal responsibility.

I always prefer that we be regulated and governed and examined and treated by people with 50 different uniforms rather than those with just one. So, my questions today are going to concentrate on that Federal/State interface; that is, the relative roles that each level of government should play in making certain that there is a cop on the beat and who watches the emerging marketplace and has the ability to protect customers from fraud and from abuse. I think that is the major purpose of this hearing today and I thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. BARTON. Thank you, Congressman. Before we recognize Mr. Bryant, we have been working our little timing system, and I am told that there is an electrician standing by and we have got to see if this thing works. The red light works, but the green light doesn't work. Where is the electrician? This is high-tech Congress, isn't it? See if you can get the green light to work.

Mr. HALL. I think you used 16 minutes, Mr. Chairman.

Mr. BARTON. That is probably true. Well, let's give him a second. Try it again. The red light works. All right. To be continued.

The Chair will recognize Congressman Bryant from Tennessee for an opening statement.

Mr. BRYANT. I thank the chairman and I also thank the ranking member for their comments. I, too, believe that consumer protection is largely a State issue. I believe that the States that have already initiated retail competition have enacted consumer protections including consumer education, slamming protection, and universal service. Already, as the chairman has mentioned also, there are a wide variety of Federal protection statutes under the Federal Trade Commission including the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Truth-in-Lending Act, the Fair Debt Collection Practices Act, as well as the Telemarketing and Consumer Fraud and Abuse Prevention Act.

There are some areas that, again, other members have already alluded to where there could be a Federal interest and Federal role. Certainly, standardized information disclosure that was present in

one of last year's bills, the slamming provisions, consumer education, again, universal service, licensing of suppliers and certainly the very powerful issue of privacy. But, I look forward to this very distinguished panel testifying today and would yield back the balance of my time.

Mr. BARTON. Thank you, Congressman Bryant. We now recognize Mr. Sawyer of Ohio, who is now officially the co-chairman of the working crew on electricity restructuring.

Mr. SAWYER. Thank you, Mr. Chairman. I think it is probably prudent that I finish reading my opening statement before I submit it or even read it to the rest of the panel. So I will do that and then hand it in. Thank you very much.

Mr. BARTON. All right, we will defer and recognize the gentleman from Illinois, Mr. Shimkus, who had a good day of baseball practice today. Hit one over the left fielder's head, I believe.

Mr. SHIMKUS. No, centerfield.

Mr. BARTON. Centerfield.

Mr. SHIMKUS. Thank you, Mr. Chairman. I am looking forward to this testimony. As many of you, and as the chairman duly notes many times, Illinois has a restructuring bill. Many of the consumer protection issues that we will be addressing today is included in an Illinois bill. Everywhere from energy assistance, to get the redlining, slamming, misleading marketing practices, consumer education programs. So, we are really proud of that provision and ensuring that everyone is going to be served.

I guess the question that I will be looking for as we move on a Federal bill is to make sure that these important issues, that they are really warranted, and that to ensure that if States have moved aggressively in these areas that we protect what the States have done in their consumer approach. Also, I will be investigating how current Federal law may apply where there may not be a need for further restrictive language in our restructuring bill.

With that, Mr. Chairman, I yield back my time.

Mr. BARTON. Thank you. The Chair would recognize Mr. Pallone of New Jersey for an opening statement.

Mr. PALLONE. Thank you, Mr. Chairman, and I wanted to say I appreciate your keeping this hearing to one panel and your decision to hold the hearing with the panel of State utility regulators on a separate date. My home State of New Jersey, as I mentioned before, recently enacted restructuring legislation that will enable all State residents to choose their electricity supplier by August 1. The New Jersey plan recognizes the nexus between the electric power industry and the need for consumer protection and to this end, New Jersey's legislation contains disclosure provisions including environmental disclosure.

In the near future I plan to introduce an expanded version of my restructuring bill which will include meaningful and enforceable disclosure provisions, a kind of truth-in-labeling law for electric energy, among other provisions. Consumers, I believe, want and deserve to know the price, source and environmental content of the energy products and services they are purchasing. And, I will be interested to hear from today's panelists their opinion of what elements should be handled by the States versus those that the Federal Government should handle. I also hope our panelists will pro-

vide their opinions regarding the administration's opt-out provision, disclosure provisions, universal service, and public systems benefits funds.

And again, Mr. Chairman, I want to thank you for holding this hearing and I look forward to the witnesses.

Mr. BARTON. Thank you. The Chair would recognize the gentleman from Oklahoma for an opening statement, who was also at baseball practice today and played very well at shortstop.

Mr. LARGENT. Thank you, Mr. Chairman. It is easier to play good at shortstop when you don't have any balls hit to you.

Thanks for having this hearing and I look forward to the testimony that we are going to hear from this distinguished panel. It is time. I think that there are some issues that we need to talk about with this panel and hopefully get answers to issues on reliability, transmission issues, what States are already doing, successful things that have taken place, and those that have not been so successful, to help shape where we go at the Federal level.

And I look forward to the testimony. Thank you, Mr. Chairman. I yield back.

Mr. BARTON. Thank you, and I also understand that you and Congressman Markey are going to introduce your legislation today, and I am sure that would be of interest to this audience. So I look forward to that.

Mr. LARGENT. We are selling tickets. It is at 1:30.

Mr. BARTON. Be there.

The gentlelady from Missouri is recognized, Ms. McCarthy, for an opening statement.

Ms. MCCARTHY. Thank you very much, Mr. Chairman, for holding this hearing. I believe this issue is, indeed, critical as we move forward. Many States like my own, Missouri, have taken a look through their public service commissions or other regulatory bodies into this question of consumer protection, and the task force that the Missouri Public Service Commission wrote includes issues like the development of rules containing a minimum, their affable, enforceable uniform standards of disclosure that will allow consumers to easily compare items of interest such as price, price variability, contract terms and conditions, and other relevant factors.

I came to this committee and this Congress about the time we were deregulating telecommunications, and I am living through the frustrations of consumers who can't read their phone bills anymore without a great deal of frustration and confusion. So, the critical component I think that you will be addressing today is essential because this is like the last great deregulation that Congress is going to do. We have to do this one right and well or I don't believe the consumers will take kindly to us.

So, I look forward very much to your testimony and wisdom on this point. And again, Mr. Chairman, thank you very much for your leadership in this area.

Mr. BARTON. Thank you. Thank you, Congresswoman. Does Mr. Sawyer want to make an opening statement? He was here and then he wanted to defer.

Mr. SAWYER. No, Mr. Chairman.

Mr. BARTON. No? Okay. Does Congressman Shadegg wish to make an opening statement?

Mr. SHADEGG. Mr. Chairman, I simply want to thank you for holding this, yet another in a series of hearings. I think these issues are critically important. I began my service on this committee by expressing my view that it was important for Congress, on behalf of the American people, to deregulate energy; that, indeed, technology is forcing us into that position; that we can, in fact, deliver electricity to consumers at lower prices; that we can give them the option of buying electricity that fits their needs; that we can, for example, give them the opportunity to buy green power, if they choose to buy green power, and do things to protect the environment and use their own financial resources to push public policy in that direction, and that there are many opportunities to be achieved by deregulating the energy industry.

I am somewhat dispirited by the fact that in the course of these hearings, and in my discussions with industry representatives on every side of this issue, I have discovered that there are very, very, very significant hurdles to be overcome before we are going to be able to pass legislation to deregulate the energy industry. It seems to me that one of the biggest problems is that, unlike the other areas where we have engaged in deregulation, the government itself is deeply involved in this marketplace. In airlines, you didn't have the government airline competing against some privately owned airlines, and therefore, deregulation was not as difficult as it is here. The same is true of trucking, for example.

But, notwithstanding the fact that we have some great challenges, notwithstanding the fact that I think one of the biggest challenges is to figure out how to level the playing field between public power and private power, I believe we must rise to the occasion. I think that it is vitally important that we put in the energy and put in the effort and achieve legislation in this area. A part of that legislation has to be consumer protection. I certainly believe in a marketplace, but I do not believe that a marketplace functions if people cannot understand the products they are buying, can't make informed decisions one way or the other.

Now, I am generally not in favor of complex government regulation and detailed mandates on any business, but when it comes to telling business you must tell the straight scoop to your customers, they must be able to read their bills; they must be able to figure out what they are buying and what they are paying for and what they may choose not to buy and not to pay for. I think those are appropriate instructions for the government to give to the private sector in terms of creating a truly competitive marketplace. So, I think this is a vitally important hearing, and I commend you, Mr. Chairman, for holding it.

Mr. BARTON. Thank you, Congressman. Seeing no other members present, the Chair would ask unanimous consent that all members not present have the requisite number of days to put a statement in the record at this point in time. Hearing no objection, so ordered.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Thank you Mr. Chairman. I would like to commend you for your dedication to electricity competition and the pragmatic approach taken to ensure that all aspects of deregulation are explored and debated.

I would also like to take this opportunity to welcome a fellow Floridian, Mr. Blake Casper from Tampa. I look forward to his perspective as both a residential and business consumer.

The hearing before us today focuses on one of the most important aspects of electric utility deregulation—Consumer Protection. In fact, consumers are the reason why we are working to assist the states in transforming a heavily regulated monopoly into a competitive, deregulated industry.

Such a transition is not without risk—but the rewards of competition can easily outweigh the potential risks if we are prudent about adequate consumer safeguards. In addressing issues such as information disclosure, licensing requirements, consumer education, and protection against deceptive business practices; we must be mindful of the following questions:

- How far should consumer protection extend?
- Are current federal laws able to provide adequate protection? If not, what additional authority should we as legislators grant the federal government?
- Finally, should the states, who have the lead role in retail competition, also retain a lead role in consumer protection?

Mr. Chairman, I look forward to exploring these and other questions and I welcome this panel of witnesses who undoubtedly will provide us with invaluable information.

Thank you.

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Mr. Chairman, I commend you for holding this hearing on consumer protection issues in a competitive electricity power market. I have said it in the past, I shall say it again now, ALL consumers must be able to choose their electricity provider and enjoy ALL the benefits that competition holds for them. This is the greatest consumer protection of all.

The Commerce Committee, as a custodian of consumers' rights, has pursued with vigor its duty to protect consumers' rights. The Committee has been vigilant in protecting electricity power consumers' rights in a fully regulated market. The Committee has no lesser resolve in protecting electricity power consumers in a fully competitive market, or during the transition. We must not let the benefits of a competitive electricity power market be highjacked by "bad" acts of a few unscrupulous folks.

As consumers, we must have access to information that is free from falsehoods, misrepresentations, or other deceptions in order to make informed purchasing decisions. Since most consumers rely on advertising as the primary source from which they obtain information about products and services—electricity power services is no exception—ensuring the integrity of advertising should be a priority. In a competitive electricity power market, consumers will be bombarded with a wide range of price and service offers, contract terms, and service claims such as environmental friendliness from a variety of information sources. All that may prove to be confusing and difficult to evaluate. For example, consumers may have trouble understanding what is "green" about a "green power" offering. Other consumer protection issues such as information privacy, slamming, and cramming that enjoyed little relevance in a fully regulated electricity power market will become relevant in a competitive market.

States that have opened their markets to competition have tackled many, if not most, of those consumer protection issues. They have empowered either their Public Utility Commissions or Attorney Generals' Offices with the necessary power to address those issues. Consumer protection issues that escape scrutiny at the State level, are addressed by a number of existing federal consumer protection laws, most ably enforced by the Federal Trade Commission. If current federal laws, in turn, do not accord consumers the required safeguards, then we must act.

I thank you Mr. Chairman and again commend you for holding this hearing. I am very pleased that the Members participating in the Members Working Group heard from former Representative Phil Sharp yesterday. I believe the Member Working Group is a fine example of bipartisanship and I commend Mr. Pickering and Mr. Barton, Mr. Sawyer and the others for working so hard on an issue of such importance to the Committee.

So, I yield back my time and I look forward to hearing the testimony of the witnesses.

Mr. BARTON. We want to welcome our panel today. We have got a distinguished group of individuals. We are going to start at my

left, your right, with Ms. Elaine Kolish and then we will work right down the row. We are going to give each of you 5 minutes, and since we don't have our timer back, we have a little clock up here that we will click. So you will just have to trust me on the click and, alternatively, if two-thirds of the members present hold up a sign that says we have heard enough, then you know that your time has expired.

Congressman Hall says you don't have to take your full 5 minutes if you don't want too.

So we are going to start with Ms. Elaine Kolish, who is the Associate Director of the Bureau of Consumer Protection for the Federal Trade Commission. Ms. Kolish, we welcome you to the subcommittee. Your statement is in the record in its entirety, and you are recognized for 5 minutes.

STATEMENTS OF ELAINE D. KOLISH, ASSOCIATE DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; MARY ELLEN BURNS, ASSISTANT ATTORNEY GENERAL IN CHARGE, BUREAU OF ENERGY AND TELECOMMUNICATIONS; HARVEY MICHAELS, CHIEF EXECUTIVE OFFICER, NEXUS ENERGY SOFTWARE; BLAKE CASPER, CASPERS COMPANY; JACK BRICE, MEMBER, BOARD OF DIRECTORS, AARP; MARK N. COOPER, DIRECTOR OF RESEARCH, CONSUMER FEDERATION OF AMERICA; AND BETTY JO TOCCOLI, CHAIR, SMALL BUSINESS ALLIANCE FOR FAIR UTILITY DEREGULATION

Ms. KOLISH. Thank you, Mr. Chairman and members of the committee.

Mr. BARTON. You need to really pull that microphone close to you and speak clearly.

Ms. KOLISH. Thank you, Mr. Chairman and members of the committee. The FTC is pleased to appear before you today to present testimony concerning the important topic of consumer protection in a deregulated power market. The FTC has been preparing for its role in deregulation by educating ourselves about the power industry. For example, Commission staff have been attending meetings and conferences of the National Association of State Utility Commissioners, the National Association of State Utility Consumer Advocates and meetings sponsored by the National Association of Attorneys General.

We have also been working with our colleagues at the Federal level such as DOE and EPA and we worked with them to produce this booklet called A Blueprint for Consumer Protection which has a compilation of State and Federal consumer protection laws and is designed to help State decisionmakers who have not yet done deregulation. We have also shared our knowledge of consumer protection issues with State officials by providing them comments on various consumer protection measures that they have been considering. To further educate ourselves, and to assist States in examining consumer protection issues and industry trends, on September 13 and 14 the Commission will hold a public workshop on market power and consumer protection considerations.

I would like to briefly explain the FTC's jurisdiction and authority in this area. We are a law enforcement agency with a statutory

mandate that covers a broad spectrum of the American market, including the power market. The keystone of the FTC's consumer protection law enforcement effort is section 5 of the FTC act which prohibits unfair or deceptive acts or practices in commerce. The scope of section 5 encompasses a wide range of business practices including advertising, marketing, billing, and collection. The Commission prosecutes deceptive activity either through administrative law enforcement actions or through Federal district court actions enjoining deceptive practices and seeking redress for injured consumers.

Experience has taught us that competition among market participants will ordinarily provide consumers with the benefits of low prices, good products, and greater innovation. In principle, these benefits should be provided in the electric power industry as a century of deregulation gives way to competition. These benefits, however, will not be achieved without vigilant consumer protection.

One of our first priorities has been to educate energy marketers about existing consumer protection laws which may be new to them. But, our actions will not be limited to education. The Commission anticipates that as electric power markets become competitive it will actively pursue consumer protection activities in two major areas. The first is the policing of advertising claims, particularly claims about the environmental attributes of the power being sold. The second is the prosecuting of deceptive or fraudulent business practices.

I would like to first talk a bit about advertising in this market. We anticipate that advertising will become extremely important in this industry when widespread deregulation occurs because an estimated $200 billion dollars in annual revenues would be at stake. Currently, advertising by this market is a small fraction of that for other consumer commodities, but it is growing rapidly. For example, in 1997 advertising expenditures grew 65 percent, and in 1998, another 12 percent.

In a competitive market, power marketers are likely to make a broad range of claims. We have already seen the use of environmental advertising in those States that have opened their markets to retail competition. Many consumers are interested in the environmental qualities of the power they buy, and some consumers have indicated that they are willing to pay a premium for so-called environmentally friendly power.

There is, however, a potential for abuse of environmental claims because of the premium price and because consumers cannot verify for themselves any of those advertising claims. The types of environmental claims already appearing in electricity ads include claims about the level of emissions of a product, the sources it is produced from, such as nuclear free or all solar, the activities of the company selling it who support environmental organizations, or the overall affect on the environment; like helps prevent global warming. All of the FTC's general principles about advertising will apply to these kinds of claims. That is, advertising claims must be truthful, they must not be misleading, and they must be substantiated by appropriate evidence at the time that they are made.

The FTC's existing Guides for the Use of Environmental Marketing Claims, which were developed for environmental claims

about any type of product, will provide guidance to power marketers on acceptable advertising in this area. In addition, NAAG is developing similar green guidelines specifically for electricity. The intent of that project is to assist States in their efforts to encourage fair competition and to provide consistency among States in enforcing State truth-in-advertising laws. The FTC has been pleased to participate in NAAG's process.

Mr. BARTON. We have had the first click up here, so try to summarize in the next minute if you could please, ma'am.

Ms. KOLISH. Our other chief concern is, as you have mentioned, slamming, which we have seen in the telecommunications industry and possibly cramming as well, which is the fifth most common complaint we received last year; that is, placing unauthorized charges on consumer's telephone bills, and we are concerned about that in this industry too. But, we stand ready to meet our consumer protection and competition law enforcement responsibilities.

[The prepared statement of Elain D. Kolish follows:]

PREPARED STATEMENT OF ELAINE D. KOLISH, ASSOCIATE DIRECTOR FOR THE DIVISION OF ENFORCEMENT, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

I. INTRODUCTION

Mr. Chairman and members of the Committee, the Federal Trade Commission is pleased to appear before you today to present testimony concerning the important topic of consumer protection in a deregulated electric power market. I will concentrate my remarks today on the Commission's likely consumer protection role as retail competition develops in the electric power industry.

Three weeks ago, the Commission testified before this Committee regarding the impact of market power and the importance of competition on the future of the electric power industry. More specifically, the Commission stated that "competition between market participants will ordinarily provide consumers with the benefits of low prices, good products, and greater innovation."[1] We believe that the antitrust and consumer protection parts of our mission are closely integrated because consumers will not benefit from competitive markets unless they are also able to make confident purchase choices based on complete and accurate information.

The Commission has been preparing for a deregulated electric power market over the past several years, beginning with our self-education by talking to industry members and to state regulators. For example, Commission staff have been actively participating in conferences and meetings of the National Association of Regulatory Utility Commissioners (NARUC), the National Association of State Utility Consumer Advocates (NASUCA), and in meetings sponsored by the National Association of Attorneys General (NAAG).[2] As we have done with the state competition regulators, we in turn have shared our knowledge of consumer protection issues with state officials by, among other things, submitting written comments to various states about consumer protection issues they were considering.[3] We are also participating in NAAG's process to develop environmental marketing guides for electricity. In addition, to further assist states in examining consumer protection issues and to identify industry trends as states deregulate their electricity markets, the Commis-

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[1] Testimony of the Federal Trade Commission Before the Committee on Commerce, Subcommittee on Energy and Power at 2 (May 6, 1999).

[2] For example, during 1997-1998, Wisconsin Attorney General James Doyle, then-President of NAAG, made the theme of his presidency consumer protection and competition issues in the deregulated utility markets. FTC staff attended NAAG hearings held around the country to examine these issues.

[3] These comments may be found on the Commission's website at <www.ftc.gov/be/advofile.htm>. Other federal agencies also have been engaged in efforts to assist state decision makers about consumer protection issues that are relevant in a deregulated environment. The Department of Energy has released a report entitled "Retail Electric Competition: A Blueprint for Consumer Protection," that comprehensively reviews the variety of consumer protection issues raised by retail electric competition, including the various state laws in effect in this area. FTC staff assisted DOE with this publication by reviewing those sections addressing FTC laws and regulations.

sion will hold a public workshop on September 13-14, 1999, on market power and consumer protection considerations in restructuring the electric power industry.

II. THE FTC'S JURISDICTION

The FTC is a law enforcement agency whose statutory authority covers a broad spectrum of the American economy, including the electric power industry. The keystone of the FTC's consumer protection law enforcement effort is Section 5 of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce."[4] The scope of Section 5 encompasses a wide range of business practices, including advertising, marketing, billing and collection. The Commission takes action against deceptive activity under Section 5 either through administrative law enforcement actions or through federal district court actions seeking temporary and permanent injunctive relief and, ultimately, restitution to injured consumers.

Experience demonstrates that competition among market participants will ordinarily provide consumers with the benefits of low prices, good products, and greater innovation. In principle, these benefits should be provided in the electric power industry as a century of regulation gives way to competition. These benefits, however, will not be achieved without, among other things, vigilant consumer protection.

One of our first priorities has been to conduct business education.[5] Because a competitive market will rely on advertising and promotional activities, we are engaged in efforts to educate electric power providers about existing consumer protection laws that will apply to their business practices. For example, staff recently participated in a conference the Edison Electric Institute (EEI) sponsored to educate its member utilities about consumer protection principles.[6]

The Commission anticipates that, as electric power markets become competitive, the agency will focus closely on two areas of consumer protection. The first is the policing of electric service providers' advertising claims, particularly claims about the price and environmental attributes of the power being sold. The second is the policing of unfair or deceptive business practices such as slamming or cramming.

III. ADVERTISING CLAIMS

In a competitive retail electricity market, electricity service providers are likely to make a broad range of advertising claims, including claims about the nature of the service provided, the company selling the electricity, and the price for the service. The FTC, as well as state attorneys general and public utility commissions, will be active in policing against false and misleading advertising for electricity products, just as they do now for most other products. Huge resources are at stake in this industry, whose total annual revenues are estimated at $200 billion. Although advertising by electric power companies is a small fraction of that for many other consumer products, it is growing rapidly as deregulation advances. For example, ad spending by the electric power industry grew 65% in 1997 and 12% in 1998.[7]

We have already seen the use of environmental advertising in those states that have opened their markets to retail competition. Many consumers are interested in the environmental qualities of the electric power they buy, and some consumers are willing to pay a premium for "environmentally friendly" electric power. There is, however, a potential for abuse of environmental claims because of the premium price, and because consumers cannot verify any of these advertising claims themselves.[8]

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[4] 15 U.S.C. § 45.

[5] The Commission devotes significant resources to such activities in order to assist business who desire to comply with the law. We routinely provide advice and guidance on consumer protection issues, based on our substantial expertise in consumer protection issues arising in many different industries.

[6] "Advertising--Labeling and Disclosure: Are You Aware of the Rules of the Road?" EEI, May 3-4, 1999.

[7] EEI EnergyADSmart, "Electric Power Ad Spending Rises Slightly in 1998" (May 1999), <http://www.eei.org/7online/adsmart/9905/powerad.htm>.

[8] It may be worth noting how environmental claims can be made for what would appear to be a homogeneous, undifferentiated product. In general, customers receive electricity from power lines that are attached to a "grid" into which numerous generators, using a wide variety of fuel sources and generation systems, transmit their electricity. Once on the grid, all electricity is mixed together and its origins become indistinguishable. When a customer has a demand ("load") for electricity—for example, to turn on lights—the amount needed to meet the load is, in effect, drained off the grid. The electricity passing through the circuit nearest to that customer's line goes to the customer's meter and meets the load.

In this situation, it is impossible to ensure that electricity used by a particular customer came directly and exclusively from that customer's supplier or to verify the precise sources of the elec-

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The types of environmental claims already appearing in electricity ads include:

- claims about the level of emissions of a product ("20% lower than average" or "doesn't pollute the air or water");
- the sources it is produced from ("nuclear free" or "all solar");
- overall effect on the environment ("help prevent global warming" or "reduce acid rain" or "green power"); or
- the activities of the company selling it ("we support environmental organizations" or "10% of profits go to rainforest preservation").

All of the FTC's general principles about advertising will apply to these kinds of claims; that is, advertising claims must be truthful and they must be substantiated with appropriate evidence at the time they are made. Under FTC case law, deception occurs "if, first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material."[9] It also is deceptive to omit "material information, the disclosure of which is necessary to prevent [a] claim, practice, or sale from being misleading."[10] Express claims, or deliberately made implied claims, used to induce the purchase of or payment for a particular product or service, are presumed to be material.[11] Substantiation of claims about electricity sources or characteristics presents many challenges because new tracking systems must be developed for competitive markets, and they must provide a means of independent verification.

The FTC's Guides for the Use of Environmental Marketing Claims,[12] which were developed for environmental claims about any type of product, also will provide guidance to electricity marketers on acceptable advertising practices. In addition, NAAG is developing similar green guidelines for electricity. The intent of that project is to assist states in their efforts to encourage fair competition and to provide some consistency in enforcing truth in advertising laws in the electric power industry. The FTC staff has been involved in the process by submitting comments to NAAG and participating in their workshop.

The Administration's recently introduced "Comprehensive Electricity Competition Act" (CECA), would authorize the Department of Energy to promulgate information disclosure regulations for advertising and promotional materials, in consultation with the Federal Energy Regulatory Commission, the Environmental Protection Agency and the FTC, requiring electricity suppliers and marketers to disclose in a standard format certain information about the electricity they sell, including price and other charges, the type of energy resource used to generate the electricity, and environmental attributes of the electricity, such as emissions levels. The FTC, along with state authorities, would be responsible for enforcing the disclosure requirements.

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trons used by the customer. It is possible, however, to track the financial transactions that occur as power is supplied to the grid and then to the customer. A customer's usage is measured at the customer's meter. The customer is billed for that usage, and the proceeds go to the retail supplier. The supplier must in turn pay the middlemen who provided the power, and the middlemen must pay the generators whose power they bought to service the supplier. In this way, the customer's usage is linked, through the financial process, to identifiable generation plants and the characteristics (e.g., fuel type, emissions, etc.) associated with those plants. Thus, it can reasonably be said that the customer's power purchase did result in electricity, possessing the characteristics advertised by the supplier, being generated and placed on the grid. Accordingly, companies may claim to be selling electricity generated by particular power sources or having particular environmental characteristics, so long as such claims are substantiated, even though the source of the electricity that arrives at the customer's house or workplace is impossible to determine.

An alternative system for tracking electricity, referred to as a tradeable tags system, also is under consideration. In this system, each characteristic would be assigned a tag, which could be traded separately from the electricity itself. The system would work similarly to the system of sulphur emissions certificates administered by the Environmental Protection Agency. Although no state has yet adopted a tradeable tags system, it could be considered by some states in the future. See "Uniform Consumer Disclosure Standards for New England," National Council on Competition and the Electricity Industry (Jan. 1998) <http://www.rapmaine.org/nccei/altindex.html>.

[9] Federal Trade Commission Policy Statement on Deception, *appended to Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 165, *appeal dismissed sub nom. Koven v. FTC*, No. 84-5337 (11th Cir. 1984) (Deception Statement).

[10] *Id.* at 177.

[11] *Thompson Medical Co., Inc.*, 104 F.T.C. 648, 816 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987). Information concerning the cost of a product or service also has been found to be material. Deception Statement at 174.

[12] 16 C.F.R. Part 260 (FTC Green Guides).

IV. UNFAIR OR DECEPTIVE BUSINESS PRACTICES

The second major area where the FTC expects to be active in a deregulated electricity market is in the policing of various unscrupulous business practices.[13] Based on the deregulation of the telecommunications industry, we may see practices like "slamming" (changing a customer's electricity supplier without authorization) and "cramming" (placing unauthorized charges on a customer's bill) by dishonest electricity service providers as markets are deregulated. Indeed, the CECA bill provides for the FTC to issue and enforce regulations to combat slamming and cramming in the sale of electric power.

The FTC has significant experience combating cramming on telephone bills, where unauthorized charges appear on a customer's bill, sometimes completely unrelated to phone service. Cramming was our fifth most common consumer complaint last year. In addition, the Commission has been active in taking law enforcement actions targeting billing practices associated with cramming. In *FTC v. International Telemedia Associates, Inc.*, the Commission sued a billing aggregator and a vendor regarding charges for audio entertainment services delivered through collect callbacks.[14] The complaint alleged that the defendants failed to disclose the costs of the services to the consumers that they induced to call toll-free numbers to obtain the callback. In *FTC v. Hold Billing Services, Ltd.*,[15] the FTC targeted a billing aggregator and a vendor for practices allegedly resulting in unauthorized telephone bill charges for a package of services. The defendants allegedly induced consumers to enter a purported sweepstakes without adequately disclosing that they construed each completed entry form as an authorization to bill charges to the telephone number filled in on the form.

Several contributing factors lead us to believe that cramming also may become a problem in deregulated electricity markets. Billing formats used by electricity providers are often confusing, and there are many line item charges that consumers may have trouble identifying, making it more difficult for consumers to notice fraudulent charges. In competitive markets, the billing system will have to accommodate multiple vendors, some of whom may offer services unrelated to electricity. Moreover, billing may be handled by aggregators or service companies rather than the utility or service providers themselves.

The FTC also will be watching for other unscrupulous practices like pyramid schemes, investment scams and telemarketing violations in this newly deregulated market. The FTC already enforces rules and laws against these practices in other industries, and we may see them in electricity markets as well. For example, the FTC late last year settled charges with FutureNet, which was an alleged pyramid scheme. FutureNet was purporting to sell electricity service, even though at the time, no state had deregulated the sale of electric power to consumers. The FTC's settlement barred the defendants from engaging in pyramid schemes in the future, and required that they post a $1 million bond before engaging in any multilevel marketing plans in the future.[16]

The Commission enforces other consumer protection rules that will apply to the sale of electricity in a competitive market. The Telemarketing Sales Rule, 16 C.F.R. Part 310, protects consumers from deceptive and abusive telemarketing practices, for example, by requiring telemarketers promptly to tell consumers that the call is a sales call and to inform them of the nature of the product being offered; by prohibiting misrepresentations regarding the cost and other aspects of the offered goods or services; and by prohibiting calls before 8 a.m. and after 9 p.m.

The Commission's Cooling Off Rule, 16 C.F.R. Part 429, applies to door-to-door sales and other sales made away from the seller's principal place of business. It requires that a seller in a door-to-door sale of consumer goods or services (with a purchase price of $25 or more) furnish the buyer with certain oral and written disclosures of the right to cancel the contract with three business days from the date of the sales transaction. It requires that this notice be included on the sales contract or receipt and that sellers provide consumers with a copy to keep for themselves. The Rule also requires a seller, within 10 business days after receipt of a valid can-

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[13] Enforcement of consumer protection laws also promotes competition by helping to ensure that honest competitors are not denied entry to the market due to the actions of unscrupulous competitors and that they do not lose market share to unscrupulous competitors. *See generally* Neil W. Averitt & Robert H. Lande, *Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law*, 65 Antitrust L.J. 713 (Spring 1997).

[14] No. 1-98-CV-1935 (N.D. Ga., filed July 10, 1998).

[15] No. SA-98-CA-0629 (W.D. Texas, filed July 15, 1998).

[16] *FTC v. FutureNet*, No. 98-1113GHK (AIJx) (C.D. Cal. 1998).

cellation notice from the buyer, to honor the buyer's cancellation by refunding all payments made under the contract.[17]

Finally, the Commission enforces several statutes and implementing credit rules, such as the Truth in Lending Act (TILA),[18] and the Equal Credit Opportunity Act (ECOA).[19] Although utilities whose rates are set by state regulatory agencies are, under some circumstances, exempted from certain aspects of these requirements, once electric power rates are set by market forces rather than regulators, utilities and other sellers and advertisers of these services may be subject to these rules as well.[20]

V. CONCLUSION

Deregulation in a number of industries has proven to be beneficial to many consumers and the competitive process. The Commission stands ready to meet both its consumer protection and competition enforcement responsibilities to protect consumer gains that should follow the introduction of market forces to the electric power industry.

Mr. BARTON. To hear the State perspective, we now would like to hear from Ms. Mary Ellen Burns, who is the Assistant Attorney General in Charge of the Bureau of Energy and Telecommunications, the Office of the Attorney General of the State of New York. Your statement is in the record in its entirety, and we would hope that you could try to summarize it in 5 minutes.

STATEMENT OF MARY ELLEN BURNS

Ms. BURNS. Thank you very much, Mr. Chairman and members of the subcommittee. I want to thank you for giving the New York State Attorney General's Office the opportunity to address you all on this very important issue of how to protect consumers as they try to make choices about electric service for their homes and their small businesses in this new environment of deregulation.

Competition in retail electric service offers the possibility of reducing the price consumers pay and improving the quality and efficiency of the services they receive. But a competitive retail market can only work if consumers are informed, if they can rely on the information they receive, and if they can trust the competitive providers to live up to their side of the bargain.

Like other State Attorneys General, the New York Attorney General's Office is in the front line of protecting consumers and small businesses and we use State law to do so. In addition to particular statutes that address very particular kinds of consumer abuses, we rely heavily on two New York laws of longstanding. One prohibits deceptive acts and practices in the conduct of any business or the furnishing of any service, and the second outlaws false advertising in the conduct of the business or the provision of service. We have used these generic and general laws in many areas, including going against telecommunication services abuses and we intend to do so as well in this new area of deregulation of electrical service.

I would note that the role of State attorneys general varies. In our own State of New York we do not represent the Public Service Commission, our utilities regulator. We actually appear as an advo-

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[17] Some sellers of deregulated utilities are already marketing their services door to door.

[18] 15 U.S.C. § 1601 *et seq.*

[19] 15 U.S.C. § 1691 *et seq.*

[20] The TILA and ECOA are implemented by Regulation Z, 12 C.F.R. § 226, and Regulation B, 12 C.F.R. § 202, respectively. Although the Federal Reserve Board promulgates these regulations, the Commission enforces these requirements for most non-bank entities around the nation. *See* Section 108(c) of the TILA, 15 U.S.C. § 1607(c) and Section 704(c) of the ECOA, 15 U.S.C. § 1691c(c).

cate for consumers in small businesses before our Public Service Commission. In some States the attorneys general do represent their public utility commission. In some States they do not appear as advocates. In some States they represent the advocates who appear before the public utility commission. So, I would want to note that our views here today really reflect our particular position in New York and don't necessarily reflect the views or the perspectives of other State attorneys general.

I would also note, as the committee has pointed out and as the FTC witness has pointed out, that there is a National Association of Attorneys General (NAAG) working group on utility deregulation, and we are very active with that working group—indeed, we are the co-chair—and that working group has had the occasion to address many of the consumer protection issues that the members have raised this morning. We have appended to our testimony several resolutions that were passed by NAAG that address some of the subjects mentioned.

Just briefly, New York was one of the first States to start to deregulate its electricity markets starting in around 1996. Deregulation is being phased in in New York. It has been pursuant to order of the Public Service Commission and not pursuant to legislation, which is perhaps unique in terms of how other States are doing it. And as a result of it being phased in very gradually, I think it would be important for the committee to note that we don't have extensive hearings yet with consumer frauds or with consumer abuses.

As NAAG actually noted in a December 1998 report, nationwide competition has entered the market to such a limited extent that there has not yet been an opportunity for consumer fraud to become a significant problem. Nonetheless, it is certainly appropriate for us to be proactive and farsighted in trying to head off consumer abuse and identifying areas of abuse. Those areas, as we see it, include the following, and it includes many of the things that have been mentioned so far: uniformity of definitions and the use of plain language in advertising as well as in billing. We think that is critical, and there are two NAAG resolutions which address that. It is important because this is a technical area consumers have little familiarity with making comparisons, and also because electricity is an essential service.

Mr. BARTON. I hate to nag somebody representing NAAG, but your click has just clicked, so if you could summarize in about 1 minute?

Ms. BURNS. We also think there should be protection against termination of services. There is in New York for incumbent utility providers. We are concerned about slamming. We haven't seen it yet, but we think that is a real, certainly a possibility. We are concerned about privacy issues, and in terms of the bottom line question of Federal and State roles here, we certainly think this area has been one of traditional State concerns for additional State protection, both on the regulatory side and on the law enforcement side. However, we certainly do welcome Federal initiatives and I think there is probably more than enough for both the Federal and the State government to address in this area. We hope to work with you all on it.

[The prepared statement of Eliot Spitzner follows:]

PREPARED STATEMENT OF ELIOT SPITZER, ATTORNEY GENERAL, STATE OF NEW YORK

Chairman Barton, Members of the Subcommittee on Energy and Power, thank you for this opportunity to address the Subcommittee on the important issue of protecting consumers as they shop for electric service for their homes and small businesses. Competition in retail electric service offers the possibility of reducing the price that consumers pay for electricity and improving the quality of that service. However, the competitive retail electric service market will work only if consumers can rely on the information they receive, can trust competitive electric service suppliers to live up to their side of a bargain, and can expect fair treatment in the delivery of this essential service.

The Role Of The State Attorneys General

Like other state Attorneys General, the New York State Attorney General's Office is in the front line protecting individual consumers and small businesses. In addition to using many specific statutes targeted at particular practices, we rely heavily on two New York laws of general application, one that prohibits "deceptive acts or practices in the conduct of any business, trade or commerce, or in the furnishing of any service"[1] and a second that outlaws "[f]alse advertising in the conduct of any business, trade or commerce, or in the furnishing of any service."[2] We have applied these general consumer protection statutes to many kinds of consumer frauds and abusive business practices, including, for example, those which have arisen in the retail sale of telecommunications services. We expect to apply these same laws to protect consumers in the context of deregulated retail electric services.

The Attorneys General in other states have general and specific consumer protection statutes similar to New York's. However, state consumer protection statutes do differ. Moreover, the role of state Attorneys General in matters involving electric service varies. In addition to enforcing the consumer protection laws, the New York Attorney General advocates on behalf of residential and small business consumers before our State Public Service Commission. We do not represent the Public Service Commission. Some Attorneys General in other states have similar advocacy roles with respect to utilities, while others represent the utility regulator and do not appear as a party in regulatory proceedings.

The role of an Attorney General also differs from that of a state utility regulator, such as New York's Public Service Commission. Our office sometimes has opinions that may differ from those of utility regulators. Our testimony today relates the views of the Attorney General's Office only and should not be construed to represent or imply any position or opinion of any other New York State agency, or of any other state Attorney General..

Despite their differing circumstances, state Attorneys General currently face or expect to face similar problems with the deregulation of utility services. For this reason, in 1996 the National Association of Attorneys General ("NAAG") established a Utility Deregulation Working Group to study utility deregulation and advise the state Attorneys General about the anticipated effects of deregulation, including, among other issues, potential consumer abuses in the deregulated retail electric service marketplace. To date, NAAG has adopted three resolutions on electric utility service deregulation, two of which deal extensively with consumer protection, and which are attached to this testimony. New York is currently the co-chair of the Utility Deregulation Working Group, along with North Carolina.

Electric Service Deregulation In New York

New York is one of the first states to deregulate its electricity markets. We did so pursuant to Public Service Commission orders, rather than under statute. New York began phasing in deregulation of retail electric service in June, 1996 with a limited pilot program for the customers of a single utility. Today, there are deregulation orders for all of New York's six investor owned electric utilities.[3] We are still

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[1] New York General Business Law § 349.

[2] New York General Business Law § 350.

[3] Until May, 1998, New York had seven investor owned electric utilities: the Central Hudson Gas & Electric Corporation; the Consolidated Edison Company of New York, Inc.; the long Island Lighting Company, the New York State Electric & Gas Corporation; the Niagara Mohawk Power Corporation, Orange And Rockland Utilities, Inc.; and the Rochester Gas And Electric Corporation. The Long Island Power Authority ("LIPA") now serves former electric customers of the Long Island Lighting Company. LIPA, a self-regulated public authority, does not currently permit retail electric service competition in its franchise territory but is examining the possibility of permitting such competition.

phasing in retail electric service deregulation, but consumers of each of our incumbent electric utilities have at least limited access to deregulated sources of retail electric service.

New York's experience with deregulated retail electric service is still minimal. Only a fraction of one percent of our retail electric service customers (75,000 out of 7.2 million (0.1%)) have chosen to obtain their electricity from a deregulated supplier. Perhaps for this reason, we have yet to see numerous abuses in the deregulated retail electric service marketplace. Nonetheless, as the market develops, ensuring consumer protection for this vital service is an absolute necessity.

Consumer Protection Issues In The Retail Sale of Electricity

The marketing and sale of retail electric service raise many of the same concerns as the marketing and sale of any other consumer service. These traditional consumer protection issues include the accuracy and completeness of advertising and the possibility of abusive trade practices such as hidden charges, nonperformance and refusal to address disputes in good faith.

However, deregulated retail electric service differs from other consumer services because electric service is essential to health and safety, as well as to just about every aspect of normal living. Also, until recently consumers had no choice in electric service supplier and therefore have no experience in shopping for this service. Further, advertising of retail electric service may include terms unfamiliar to consumers.

The peculiar features of the emerging retail electric service marketplace—potential unfamiliar technical terms, consumer inexperience, and an essential service—argue for plain language and standardized definitions of any technical terms used in advertising retail electric service. NAAG twice urged plain language and standardization of technical terms, along with other consumer protections, in resolutions adopted, respectively, in March, 1997 and in July, 1998.[4]

In particular, electric service advertising that mentions price should employ a standardized means of disclosure so that consumers can make meaningful price comparisons. For example, such advertising should clearly disclose monthly service fees, minimum monthly charges and any other factors that would affect a consumer's bill. Such electric price disclosure standardization would benefit consumers in much the same way as the Truth-In-Lending Act enables consumers to make meaningful price comparisons between loan and credit card offers.

Another peculiar feature of deregulated retail electric service is the expectation that consumers may have their electric service "slammed," that is, the consumer's electric service supplier may be changed without the consumer's permission. This has proven to be a widespread abuse in the marketing of long distance telephone service. However, retail electric service slamming has not been a serious problem in New York so far. Our office is aware of only one allegation of retail electric service slamming in New York, and that incident appeared to involve a misunderstanding between a consumer who called to inquire about switching service and the supplier representative who took the call.

The absence of a significant number of slamming complaints in New York may relate to the limited number of customers for deregulated retail electric service in our state. The absence of such complaints may also be related to the New York Public Service Commission's general requirement that deregulated retail electric service suppliers adopt practices to prevent slamming.[5] In any event, simple prudence urges that we look at ways to prevent electric service slamming. We can start by looking at the experience gained in fighting telephone service slamming.

Another area of concern is that consumers may bring to the selection of a deregulated retail electric service supplier the expectation that the supplier will offer the same terms as a regulated utility. For example, in New York regulated utilities are not permitted to charge for disconnecting service and customers can discontinue service at any time. We have no such prohibition or requirement for deregulated electric service suppliers. Thus, a New York consumer shopping for an electric service supplier might assume that a potential supplier would allow termination of service without charge at any time, when, in fact, a supplier might impose a $100 disconnection fee and require a month's notice.

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[4] *Consumer Protections And Restructuring Within The Electric Industry,* adopted at Spring Meeting, March 19-21, 1997, Washington, D.C.; and *Standards For Advertising, Offers Of Service, And Bills In The Competitive Retail Electricity Marketplace,* adopted at Summer Meeting, July 13-16, 1998, Durango, Colorado.

[5] Case 94-E-0952—*In the Matter of Competitive Opportunities Regarding Electric Service,* Opinion and Order 97-5, Appendix B, p. 2 (issued and effective May 19, 1997).

The New York Public Service Commission requires deregulated electric service suppliers to provide prospective customers with a copy of a disclosure statement prior to the consumer's committing to that supplier's service.[6] Whether this requirement will prove adequate to protect consumers, or whether certain terms, such as disconnection fees, need to be prohibited or capped, is still an open question.

A further consumer protection issue arises because of the essential nature of electric service, whose interruption can cause irreparable injury to health and safety. For this reason, New York has extended special protections to residential customers of regulated electric and gas utilities. These protections ensure that consumers receive sufficient notice to take precautions to enable them to continue to receive electrical service.

The Home Energy Fair Practices Act[7] and regulations adopted under it[8] safeguard consumers in their homes by requiring adequate notice before a regulated utility may terminate service and by prohibiting or regulating certain utility practices. These requirements, prohibitions and regulations are quite extensive, including a written 15 day notice of termination of service, termination only between the hours of 8 a.m. and 4 p.m. and only on days followed by a full work day, continuation of service upon certification of a medical emergency or special need such as a lift support system in use, personal contact before termination if all adults in a household are elderly, blind or disabled, personal contact with any household before termination between November 1 and April 15, and notice to any third party a customer designates. These notice provisions are intended to prevent physical injury, provide sufficient time to pay a bill to avoid a shut off, allow immediate reconnection in the event of a mistaken shut off, and permit intervention by others to protect a customer who may not be able to take care of his or her affairs. In addition to the protections against residential customers' loss of electric service, New York restricts regulated utilities' use of estimated bills, security deposits, backbilling, and late payment charges on residential accounts.

However, these New York laws apply only to regulated utilities and impose no duties on deregulated retail electric service suppliers.

The New York Public Service Commission has examined the question of whether to protect consumers from residential service shut offs by deregulated retail electric service suppliers. The Commission imposed on such suppliers only requirements to provide 15 business days' notice before termination and to ensure the consumers a "smooth transition" to another supplier.[9] To provide consumers better protection against abuses by deregulated electric service suppliers, this office has proposed legislation that would extend the protection received by consumers of regulated utilities to consumers receiving service from deregulated suppliers.

Because electric generation has varying impacts on the environment depending on the energy source, many consumers may wish to be informed about the source of electrical generation when they choose a supplier. The New York Public Service Commission is taking steps to give consumers some of that information. Starting next year, our Public Service Commission will require both incumbent utilities and competing retail suppliers to make environmental disclosures to customers and to potential customers, setting forth the electricity provider's fuel resource mix and selected air emissions data, as compared to a statewide average to be compiled by the Commission's staff based on historic data.

State Law Enforcement Activities

In New York, there has only been one case of fraud related to deregulated retail electric service and one instance that bordered on fraud. In September 1998, we obtained a conviction under our criminal scheme to defraud statute of an individual who held himself out as a supplier of electric service and collected downpayments for such service even though the New York Public Service Commission had rejected his application to become a supplier and he had no ability to supply electricity.

In another instance in 1998 an individual was soliciting "customers" on behalf an illegal pyramid scheme based in Pennsylvania. The individual in question was rather naive and appeared not to be aware of the legal requirements for being a deregu-

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[6] *Ibid.*

[7] New York Public Service Law §§ 30 *et seq.*

[8] Home Energy Fair Practices Act—Rules, 16 N.Y.C.R.R., Part 11.

[9] If a deregulated retail electric service supplier terminates a consumer's contract and that consumer cannot find another such supplier, the New York Public Service Commission requires the regulated utility servicing the consumer's area to supply the consumer electricity as a "provider of last resort". Case 94-E-0952—*In the Matter of Competitive Opportunities Regarding Electric Service,* Opinion and Order 97-5, Appendix B, p. 2 (issued and effective May 19, 1997). However, it remains to be seen whether consumers defaulting back to a regulated utility will make the transition without inconvenience or injury.

lated retail electric service supplier. There was no evidence that this individual signed up any customers or collected any funds through his efforts.

Pennsylvania appears to have the most experience with consumer abuses in deregulated retail electric service, perhaps because it has the largest number of consumers (approximately 415,000, over five times as many as New York) who have switched to deregulated suppliers. The Pennsylvania Attorney General's Office reports having terminated five frauds involving retail electric service, and the Pennsylvania Public Utility Commission has also been active against abuses in the retail electric marketplace.

Maintaining State Authority

Consumer protections for access to retail energy services, such as the New York provisions described here, have traditionally been an area of state concern. In part this is due to the fact that retail energy services are usually provided in a geographic area within the boundaries of a single state.[10] There are also practical reasons for states to provide such protections. Climate and economic circumstances are different in each state. New York can provide consumer protection adapted to our circumstances. Another state with different circumstances may not need all of the features New York provides and may choose to create others.

State Attorneys General have been in the forefront in the enforcement of consumer protection laws, and we have the ability to act forcefully, flexibly, and effectively in the new era of electricity deregulation. In this arena, the New York Attorney General will continue to use our traditional enforcement statutes and powers and will seek other laws where appropriate or necessary. We welcome the interest of the Congress and the federal government in consumer protection in the still largely uncharted territory of electricity deregulation. At the same time, we recognize and support the historic role of the states in this area, both as regulators of electric utilities and as protectors against consumer abuse. We urge that, if federal consumer protection enforcement legislation is deemed necessary, any such laws serve as a complement to and not as a substitute for state consumer protection efforts.

Thank you for the opportunity to address you on these matters of concern. We look forward to working with this subcommittee and with other interested parties in ensuring that consumers, who are supposed to be key beneficiaries of electricity restructuring, indeed see the benefits of deregulation and are protected from abuse.

Mr. BARTON. Thank you, ma'am.

I want to welcome my next witness, which is Mr. Harvey Michaels, who is the Chief Executive Officer for Nexus Energy Software in Newton, Massachusetts. I am told you are going to give a presentation of some sort.

STATEMENT OF HARVEY MICHAELS

Mr. MICHAELS. I am.

Mr. BARTON. Okay. Now, since we have so many members disguised as empty chairs over here, let's turn this monitor around so the audience can see it. Tom, if you will scoot down this way, we'll look at this one, and we are going to let the audience look at that one. Okay. Isn't that nice? That way everybody can participate.

I am announcing for President at 2 today.

Okay. I am told your presentation takes about 8 minutes.

Mr. MICHAELS. Take as short or as long as you want.

Mr. BARTON. We don't want to give you unfair time, but are you going to talk as we go through the slide presentation or are you just going to show us something?

Mr. MICHAELS. I am going to present what we have here quickly, and if there is any area of more interest we——

[10] A few customers receive retail energy services across State boundaries where geographic peculiarities such as a large river or a mountain make it impractical to supply service from the nearest utility in a customer's home State.

Mr. BARTON. Okay. We are going to recognize you for 5 minutes, and if it takes a little bit longer because of the video, we will go beyond that. Welcome to the committee.

Mr. MICHAELS. I very much appreciate the opportunity. My name is Harvey Michaels and I am the CEO of Nexus Software. I have been working with consumers on energy choices, energy efficiency, throughout my career. Starting Nexus Energy Software 2 years ago, we were trying to use the Internet to help consumers with choices in the future, both in choosing a retail energy supplier, which I will describe today with these slides, as well as managing energy use in their homes, including energy efficiency options that they have.

The materials that I am going to show you on the screen are exhibits which are in the testimony. I will present them briefly. I will also show a few subsidiary pictures of it.

The energy guide website is designed to attract consumers and have them understand what their opportunities are. Using the zip code, when a consumer comes to our site and enters the zip code, they will be able to see all the choices that are available to them in their area. I hope this is informative to the committee to understand what the Internet can do, and what private Internet companies are doing to bring retail choice to consumers in the States that have them.

On the energy guide site there are three components: the energy gear section, which shows some energy-saving equipment that they can purchase for their homes; energy finder, which I will show today, which is their retail choice options, and general energy information, including understanding what this is all about.

If someone goes to the energy finder side of the site they will see a map of the States that currently have some form of electric deregulation retail choice. We are adding gas retail choice shortly. And, in the States that have it, if they are in one, such as Pennsylvania, which I have noted here, they have the chance to put in their zip code, and if they choose a typical winter or summer bill, what we will do at that point is show them all the choices.

Mr. BARTON. What if they are like me and they don't know the zip code? Can they find the zip code just by putting in the city that they live in?

Mr. MICHAELS. They can put in the city. They can put it on the State. But, we do drive from zip codes. So, hopefully, they know that, in terms of getting the most accurate information.

When they put that in, we will screen all the suppliers, and we try to list every supplier that is available that they can choose from. And using that typical bill, if they enter it, we will show them what their annual savings will be by choosing any one of these suppliers.

In Pennsylvania right now, the way restructuring has occurred in Pennsylvania, there are many options available to consumers that will save from 5 percent to 10 percent of their bill. There also are options that don't necessarily save them money, but are the green options. And if they look at one of those, such as the Green Mountain option, they will actually pay a little more, but they will be able to see what this option does in terms of providing environmental benefit. In fact, we found where consumers coming to this

site that many of them come initially looking to reduce their bill, but they are attracted to the green offers, and they do find them valuable to look at.

There is ancillary information that you probably can't see very clearly on these screens that deals with everything from deregulation status in the individual States, when they click on their State, to understanding frequently asked questions, such as, there are sales credits in Pennsylvania that vary by utility service territory, and a number of other rather complicating issues, and these are described, and we keep this up for each of the States that do in fact have deregulation.

I am just going to mention briefly the other side of the site and why it is there, which is energy efficiency. When a consumer goes to manage energy use in their home, they are interested in getting their bill down, and getting that bill down means a combination for many of them of choosing a supplier that costs less and using one. And, the opportunity of energy efficiency dovetails completely in home energy management. For the green energy interested consumer, they also go together. Clean energy helps the environment. Efficiency reduces their use and also helps the environment. So, these things should work together, and we found it very important in our approach to working with consumers to put them together.

We have tried some fun things, like our bulb-lite offer. This is a six-pack of compact fluorescent bulbs, and with this six-pack, which we have arranged a low-cost deal with suppliers of compact fluorescents, we compute on the site how much this box will save them. And, what is very typical is this $58.95 box of compact fluorescents will save $350 a year.

The last element of the site that I will mention is that consumers have the option of doing an energy audit of their homes and seeing how much they can save by adjusting the thermostat settings or putting in clock thermostats or lights or equipment like that. They understand how much they spend on each of their appliances in their home, if they do that, and they have this description of their house, which is generated, which will show what each of the appliances cost, which they can come back to from time to time and look at in more detail.

We are working with utilities who have sponsored the audit side of the website. In many utilities around the country they are providing an energy audit service to the consumers along with us.

Mr. BARTON. Your click has clicked also. I enjoy this presentation. Congressman Hall says he can't listen and look at the same time, though.

Mr. MICHAELS. I am sorry. This is my conclusion, if there is time for that. From working with consumers over my career, and our experience at Nexus over the last 2 years, I think that we can conclude and describe to the committee that consumers really do care about their bill. More than half are interested in energy efficiency and saving money, and about 10 percent are actively interested in spending some more to improve the environment. We get a very strong message that consumers want energy supplier choice, but they find choosing difficult.

Finally, we found the Internet as a solution that will bring these options to mass market consumers. Thank you very much.

[The prepared statement of Harvey Michaels follows:]

PREPARED STATEMENT OF HARVEY MICHAELS, CHAIRMAN AND CEO, NEXUS ENERGY SOFTWARE AND ENERGYGUIDE.COM

INTRODUCTION

Thank you Mr. Chairman for the opportunity to appear before your committee this morning and contribute input to your deliberation on the issue of electricity restructuring and competition.

My name is Harvey Michaels and I am Chairman and CEO of Nexus Energy Software. Our Headquarters are located at 233 Needham St, Newton, MA 02464. Our corporate web site can be found at www.nexusenergy.com; our e-commerce site, on which my testimony will focus today can be found at www.energyguide.com.

Nexus is a new company. I and others founded it in 1997 with a goal of creating PC and Web products for consumers that will help them use their home PC to take advantage of e-commerce opportunities in energy deregulation and energy efficiency. Nexus is comprised of personnel with a variety of expertise, including educational software, energy efficiency, energy engineering and the internet industry. This combination allows us to be able to design products that are of the quality and degree of user-friendliness that consumers expect today.

In my testimony today, I will focus on ENERGYguide.com, our e-commerce site, as an example of how the internet can be a powerful tool for consumers in deregulation. I will show how they can use it to both educate themselves about deregulation, and to identify, understand and compare the offers being made to them by competing suppliers in a deregulated state. I will talk about how Internet electronic markets may be even more applicable to energy than to some of the more conventional uses seen today. I will also provide a simulation of a visit to ENERGYguide.com to provide an example of what the Internet can provide to a consumer relative to deregulation.

Background

The energy industry is the latest in a series of industries—including airlines, trucking, banking, and telecommunications—that have undergone deregulation. In each case, deregulation has been accompanied by some degree of uncertainty and confusion on the part of consumers. Partly as a result of this, it has taken some period of time for new marketplaces in these industries to evolve. As energy deregulation unfolds today, there is a new development present that offers an opportunity for a smoother, more effective and more consumer-friendly implementation of deregulation. That development is the Internet—whose ability to bring information to consumers gives it the potential to become one of the most significant consumer tools ever available in the marketplace.

Electronic Markets and the Internet

For the first time, more and more consumers are faced with the opportunity and eventually the need to select an electricity and/or gas supplier from among competing entities. As states move to deregulate, lawmakers and regulators there are expending significant effort to put in place consumer education programs and consumer protection provisions and programs. Yet there are indications that despite considerable expenditures in some states, consumers may not yet understand their new choices and indeed may be confused. They may not understand the process nor really know how to evaluate and compare offers from competing suppliers. Consumers seek, and deserve to have, the information they need to feel comfortable with energy deregulation and the ability to efficiently and safely participate in this new marketplace. Such information can be provided by the creation of electronic marketplaces on the Internet.

Whereas in the previous decades electronic markets such as the real estate industry's MLS and Sabre's computerized reservation system (CRS) were important advances, these early electronic markets were designed for the professional—the broker in the case of those examples—to help their customers. Starting in the mid-1990's, the Internet has taken the concept of an electronic marketplace to a new level. With the Internet, it now has become possible for the consumer to get more and higher quality information and greater access to the marketplace such that they can make and execute informed purchasing decisions.

There are several factors that drive the emergence of electronic markets on the Internet:

- Consumer Search Time and Product Evaluation—Electronic market-makers aggregate relevant market information, enabling consumers to find their options

in one place, rather than having to seek information from each of many potential sellers. Moreover, consumers in the past rarely have had perfect information about the products in which they are interested, especially products that have complex attributes or that may be difficult to understand. The Internet makes this information readily available, thereby simplifying the process of matching consumers with the right products for them.

- Risk Management—Consumers often view new markets or products they may not understand as risky. The Internet allows the creation of neutral information intermediaries that can provide all product information in one place, as well as tools with which to analyze such, and thereby allow consumers to compare products along dimensions that are important to them. The possibility exists for the creation of what some consumers might consider to be the ideal market—one in which consumers are given complete, objective information about available products.

Internet-Based Electronic Markets In Energy

Electronic markets will begin to play an important role in electricity and gas, just as they have in other markets. Consumers will find it convenient to go to one place to find the information they need and be able to make purchasing decisions based on needs and product attributes that are important and understandable to them.

What sets the retail energy marketplace apart somewhat is the very newness of the market. Thus far, the penetration of customer choice in states that have deregulated has moved slower than many anticipated. An important factor may be the lack of understanding by many consumers of what is happening and what their options are. An electronic marketplace combined with information and analytical tools (e.g. ability to compare offers) may provide an important ingredient to the timely development of deregulated energy markets from the standpoint of consumer acceptability.

Electronic markets all electronically link buyers and sellers but may vary significantly in a variety of ways. Some of the characteristics that appear to be applicable to energy are:

- Objectivity—With energy, it is best that electronic markets are created and owned by independent entities, not one controlled by one or more energy companies.
- Education—With energy deregulation being new in concept, there is considerable confusion as to what it really means to a consumer, e.g. What is happening to my local utility? Will they still restore my service? Who can I buy from and when? The Internet, and neutral information intermediary sites focused on deregulation, can provide not only extensive basic information but update it instantly as new information becomes available.
- Analysis—It is natural that consumers may at first focus only on the lowest rate available to them. Internet-based analytical tools allow consumers to look at overall costs of energy offers and how different price levels and contract structures affect them. These tools can offer technically sophisticated capabilities cloaked by user-friendly operation on a web page.
- Consumer Convenience and Control—As with other items and commodities purchased on the Internet, a consumer can be in control of when and how they shop and make purchases. They can access it when they want and on their terms. At any time they have available to them all the information they need in one place. The information is up to date. If a consumer wants to use the Internet to be apprised of new offers when they become available, they have the option to have such sent to them as they become available.
- Comprehensiveness and Product Variation—Energy deregulation and the Internet should offer consumers not only the ability to compare offers on the basis of many factors but to compare and understand offers that are not just price variations but product variations as well. "Green power" offers may not be the lowest price option for a consumer in a given instance but yet offer other attributes that the consumer desires to acquire. Seeing all offers available to them and having the ability to compare them is what many would say the Internet is perfectly designed for and there may be no better application of such than to energy.

Usability testing conducted at Nexus in the process of building ENERGY guide.com clearly demonstrated this point. When consumers were faced with the task of selecting from an electronic "list" of suppliers that were part of the Massachusetts Electric Retail Choice Pilot, their immediate reaction was to select the cheapest rate. However, when the system helped them compare the likely costs of the different options and they realized the relatively small differences, every one of these consumers began to look for other factors to differentiate the supplier offers. Issues such as energy sources, minimum contract term, and size and location of sup-

plier were reacted to differently by consumers; in the end, none of them made their selection on price.

In the early stages of deregulation in Massachusetts, California, Pennsylvania and elsewhere, residential and small commercial consumers have had the opportunity to save some money by choosing a supplier, or to select a green energy supplier at a higher price. But this is clearly just the beginning. The market is beginning to create options that have greater benefit for consumers, whether they seek to reduce costs, or benefit the environment, or both.

One such opportunity is to purchase market-priced electricity. Many consumers have energy use patterns that naturally benefit from purchasing at market, since their high use periods are not on the market peak. This is particularly true of consumers in urban areas who do not air condition their homes during the day, while commercial facilities are driving up demand. Restructuring and the Internet, with tools such as what we are developing, can help consumers predict what their bills will be with market rates.

Another such opportunity is to purchase energy bundled with efficient appliances. Restructuring of the energy industry will create a period of revolutionary change in how consumers look at energy. Energy is a commodity raw material—an analogy is wheat. Consumers don't really want to purchase wheat, but rather the many products made with wheat: breads, pizza, pasta, etc. Only a regulated utility industry has kept consumers buying energy, something they also don't really want. Advances in deregulation, software, and Internet commerce will mean that consumers will eventually buy light, hot water and comfort rather than energy. Buying *end uses* rather than energy, products, and maintenance separately will naturally result in more energy efficiency. Light with standard bulbs, heat with inefficient heating systems, food storage with inefficient refrigerators will just cost too much.

Our products, including the ENERGYsmart audit and the ENERGYguide.com website, provide energy suppliers with the opportunity to create these bundled offers. For example, providing time-based energy with home automation equipment provides a way for some homeowners to create a very large reduction in energy costs. Additionally, providing efficient light bulbs or appliances as part of a green energy offer provides the consumer with a lower monthly bill due to the reduced kwh, as well as greater environmental benefit when compared with green energy alone. Several suppliers have contacted us about our ability to present such offers on our website, and these options for consumers should arrive shortly.

ENERGYguide.com, Consumers and Deregulation

Recognizing the confluence of the emergence of the Internet and the contemporaneous deregulation of electricity and gas, Nexus Energy Software was founded in 1997 to address what was seen as a natural convergence of these two developments. Our goal was to focus on using modern technology to create PC and Internet applications that can create an energy "channel" on the Internet that would allow ongoing communications and commerce between energy companies and consumers.

The changes happening in the energy industry have created a range of new opportunities for consumers. But, without assistance, most consumers find it difficult to research, compare, and choose among the alternative options. Nexus' products are intended to *help consumers make smart energy decisions,* ranging from energy efficiency in the home and business to choosing an energy supplier.

An example of one of these applications is our PC and Web software known as ENERGYsmart. ENERGYsmart is software that allows a consumer to conduct a user friendly and entertaining home energy analysis that identifies ways that they can make their home more energy efficient and environmentally friendly. Unlike many energy analysis tools previously available, ENERGYsmart has been designed by educational software and internet experts as well as energy specialists to create a tool for consumers that meets that standards they expect in software and on the web today.

ENERGYguide.com is the web site that we have created for consumers to allow them to have one place on the Internet to obtain all of the energy and energy-related information tools and online purchasing capabilities they need to manage and reduce their home energy bills and make smart, informed purchases of deregulated energy and other energy-related items. It has been designed with the consumer in mind and, specifically, with an eye towards what the needs and wants of that consumer are with respect to deregulation. The remainder of this testimony will focus on demonstrating how a consumer would interact with ENERGYguide.com.

Exhibit A is the home page of ENERGYguide.com, accessible at www.energy guide.com. There you will see a number of different options for the consumer that demonstrate how we are seeking to provide a household with both energy efficiency and energy deregulation information and opportunities. At this particular time, you

can see that we are offering a "Father's Day" contest focusing on the benefits of energy efficient and environmentally friendly lawn mowing. You will also see our energy efficiency product of the month—"BULBlite, a sampler of energy efficient compact flourescent light bulbs that can be purchased online. You will further see at the right an option called Quickfind. This is an "express" way for a consumer to search for offers in states that are deregulated. Also on our home page, while not visible on Exhibit A is a link directly to the web site of the Alliance to Save Energy, an organization that offers consumers information and assistance on energy efficiency.

In the center of the home page are links to the main three areas of ENERGYguide.com. Energy Info is the area where consumers can find a wealth of information and several analytical tools as well as links to other web sites that provide similar resources. Energy Gear provides e-commerce for energy efficient appliances and equipment. It is designed with several features that allow it to not be simply an online catalogue but to provide a consumer with personalized shopping assistance. Energy Finder is the area of deregulation. Clicking on Energy Finder will bring the consumer to the web page shown here as Exhibit B.

This web page shown as Exhibit B provides a map that quickly shows the general status of electricity deregulation across the country. (ENERGYguide.com at present offers electricity deregulation information and offers. The same capability for natural gas is due to be added in June.) By clicking on a consumer's state or on the state's name from the "drop-down" table, a Pennsylvania consumer is taken to a web page where they are presented with an opportunity to get more detail on the status of deregulation in their state and an opportunity to get a basic "education" on deregulation. Specifically, they are able to go to web pages that address the following:

- Current deregulation information for PA
- What is Restructuring?
- What's in it for me?
- Who can I buy electricity from?
- What else should I look out for?
- Other frequently asked questions for PA

This web page also allows a consumer to click to get a list of all of the officially registered suppliers in PA and to go to an "offers" page shown here as Exhibit C.

Exhibit C is the first "offers" web page encountered by a Pennsylvania consumer. On this page, consumers enter their zip code and their preferred level of detail on their electricity bills. (Simple estimates for seasonal usage will suffice but more billing data will increase the precision of savings estimates made later.)

By entering a zip code on Exhibit C's web page, ENERGYguide.com will provide all of the offers that are being made by competitive suppliers in that particular zip code, i.e. those offers that pertain to that specific consumer.

Exhibit D is the web page that a consumer in Philadelphia would see. It contains all of the offers being made, the estimated monthly cost of the offer, the minimum term of the offer and whether or not it is a green power offer. By clicking on the link at the bottom of this web page (not visible in Exhibit D) a consumer can see another web page where these offers are compared in greater detail. This is depicted in Exhibit E.

On the web page shown as Exhibit E, all of the offers are compared on the following aspects:

- Monthly Generation/Supplier Charge
- Monthly Total Electricity Bill
- Estimated Monthly savings
- 1st Year Generation/Supplier Charge
- 1st Year Total Electric Bill, and
- 1st Year Savings

With a different or additional click, a consumer can see more detail on any of the individual offers. Exhibit F is the web page that shows more detail on the offer of Green Mountain Energy Resources called "Nature's Choice".

There is no cost to a consumer to use ENERGYguide.com's deregulation components. There is no obligation on the part of the consumer who visits ENE RGYguide.com to make any purchase anywhere on the site. There is no requirement to become a registered member of ENERGYguide.com. ENERGYguide.com's privacy statement is available to any visitor to the site. ENERGYguide.com is a member of the newly formed Trust-e network.

ENERGYguide.com lists the basic information on all supplier offers at no cost to the supplier. Suppliers have the option to contract with ENERGYguide.com for ad-

vertising or other featuring on the web site. Suppliers also have the option of contracting to provide consumers with online signup capability for their offers.

ENERGYguide.com works to stay in constant touch with developments in the states on deregulation and to provide the information accordingly on the site. We communicate on a regular basis with Public Utility Commissions and other state organizations as well as with the suppliers themselves to ensure that the information is up date.

Summary

The Internet allows a consumer's desktop PC to serve as a portal for their entry into energy deregulation. Consumers can use it to put the power of information and analysis to work as they now shop for power for the first time. Lawmakers and regulators can count on it as being available as such a tool for consumers and as a development which will make the implementation of deregulation for consumers easier and more beneficial.

Exhibit A

ENERGYguide Home Page

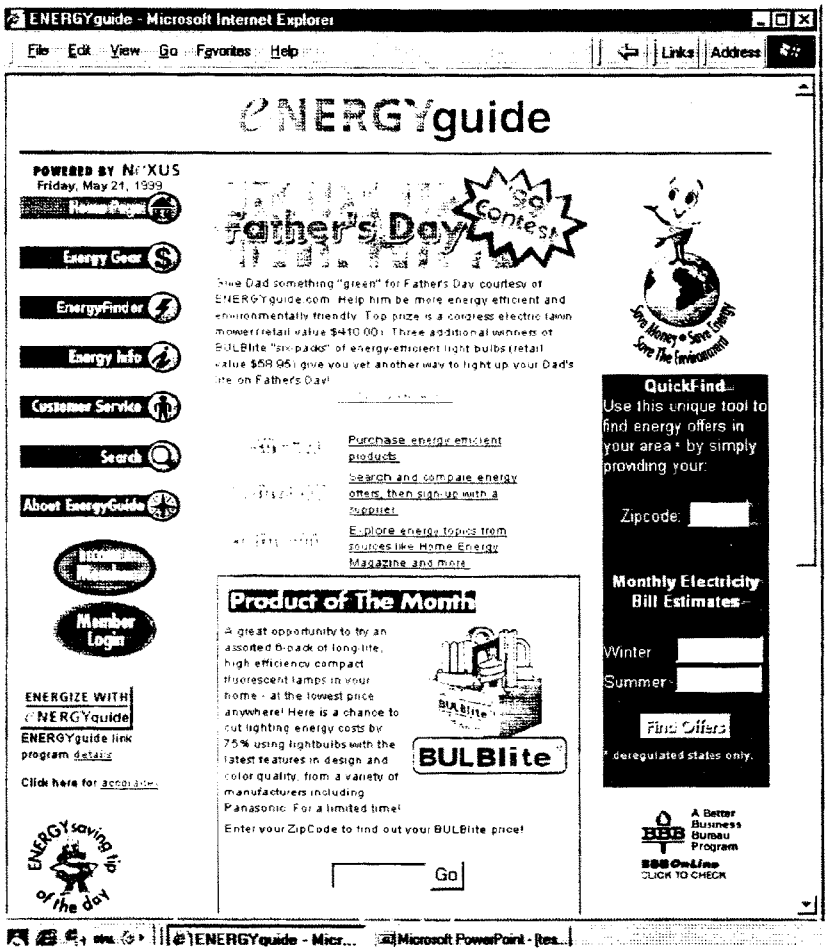


Exhibit B

State-by State Information

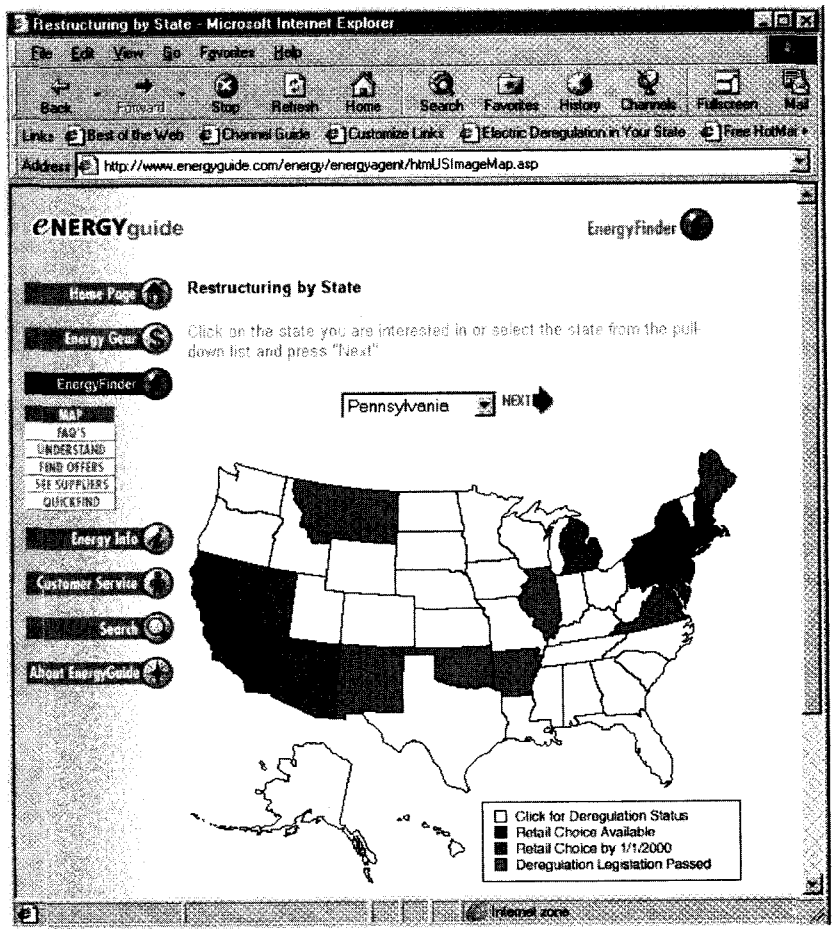


Exhibit C

Finding Local Offers

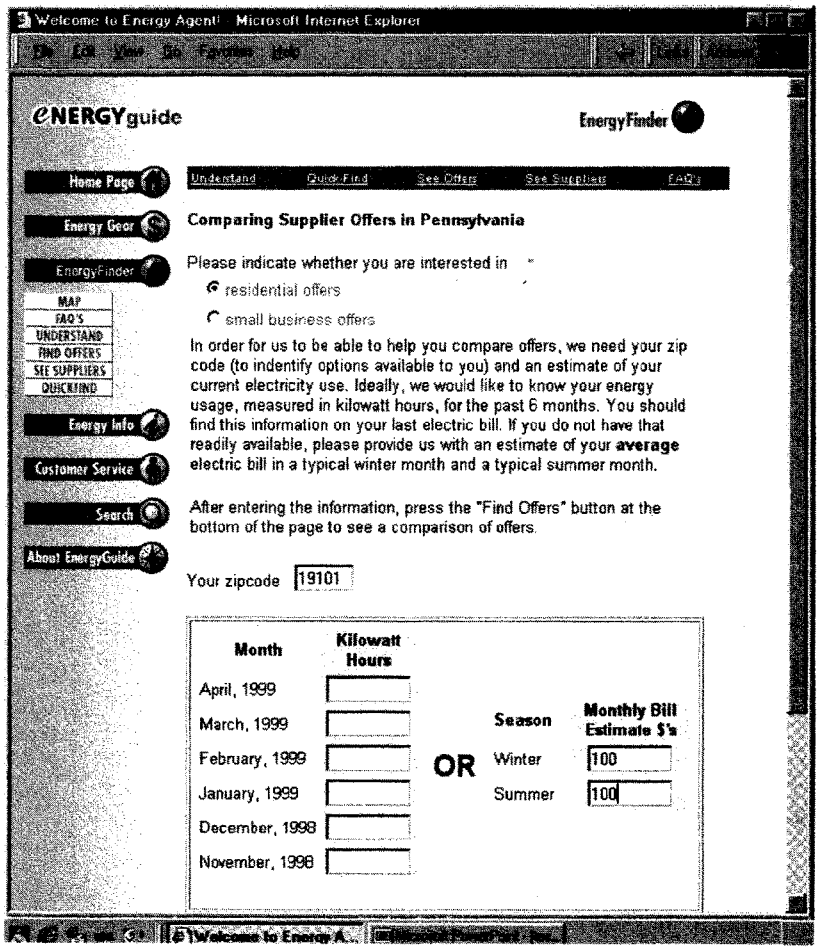
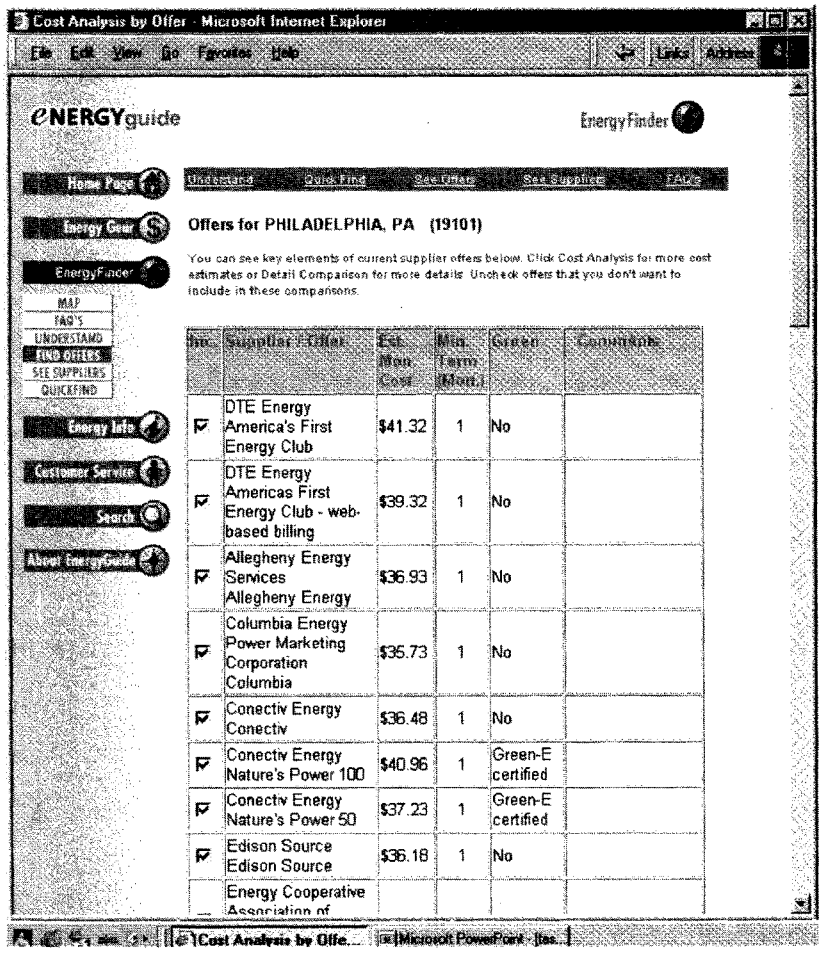


Exhibit D

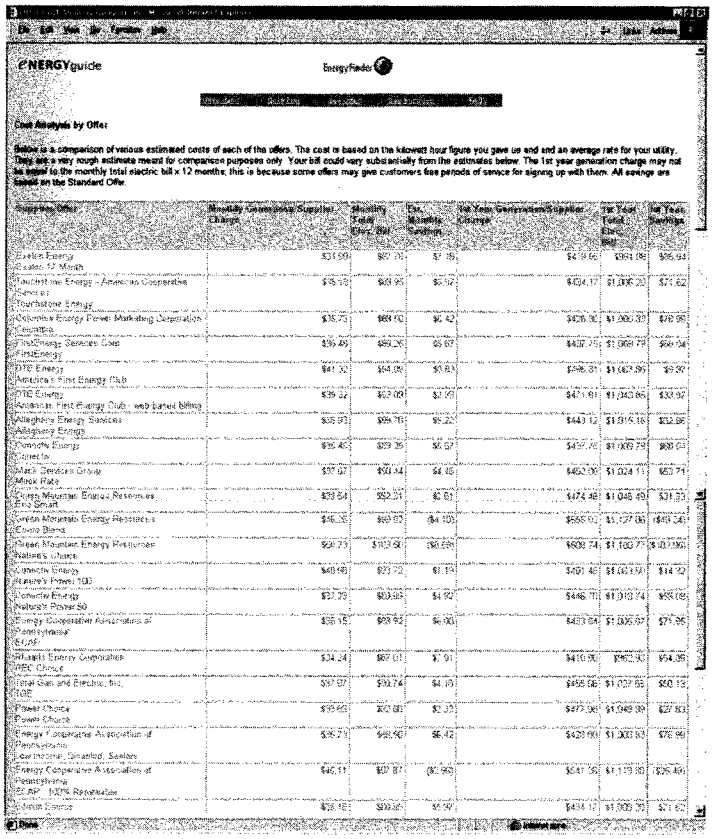
Results for zip code 19101



Inc.	Supplier - Offer	Est. Mon. Cost	Min. Term (Mon.)	Green	Comments
☑	DTE Energy America's First Energy Club	$41.32	1	No	
☑	DTE Energy Americas First Energy Club - web-based billing	$39.32	1	No	
☑	Allegheny Energy Services Allegheny Energy	$36.93	1	No	
☑	Columbia Energy Power Marketing Corporation Columbia	$35.73	1	No	
☑	Conectiv Energy Conectiv	$36.48	1	No	
☑	Conectiv Energy Nature's Power 100	$40.96	1	Green-E certified	
☑	Conectiv Energy Nature's Power 50	$37.23	1	Green-E certified	
☑	Edison Source Edison Source	$36.18	1	No	
	Energy Cooperative Association of				

Exhibit E

Comparison of Annual Costs



ENERGYguide

EnergyFinder

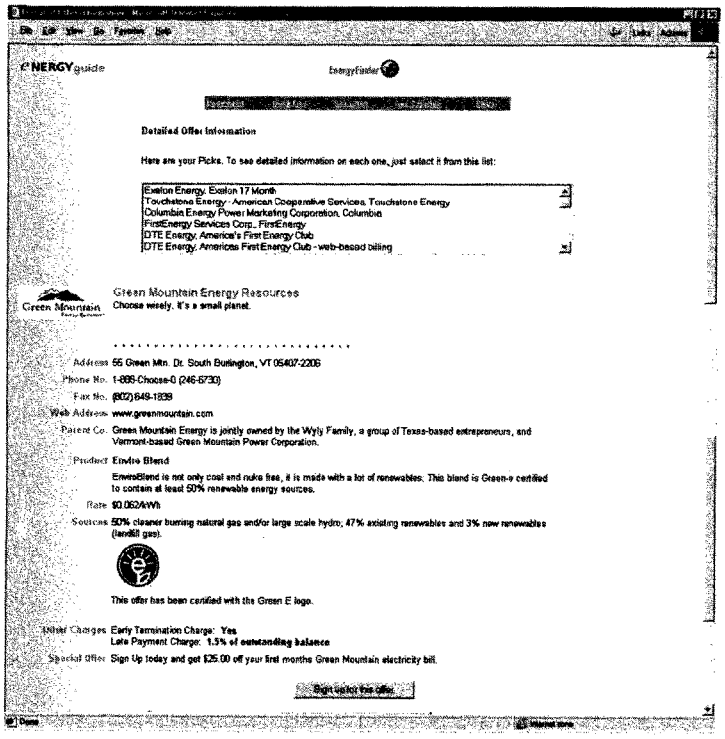
Cost Analysis by Offer

Below is a comparison of various estimated costs of each of the offers. The cost is based on the kilowatt hour figure you gave us and and an average rate for your utility. They are a very rough estimate meant for comparison purposes only. Your bill could vary substantially from the estimates below. The 1st year generation charge may not be equal to the monthly total electric bill x 12 months; this is because some offers may give customers free periods of service for signing up with them. All savings are based on the Standard Offer.

Supplier/Offer	Monthly Generation Supplier Charge	Monthly Total Elec. Bill	Est. Monthly Savings	1st Year Generation Supplier Charge	1st Year Total Elec. Bill	1st Year Savings
Exelon Energy Exelon 12 Month	$31.99	$87.79	$7.39	$419.88	$961.08	$86.04
Dominion Energy - American Cooperative Services Tourmaline Energy	$35.19	$90.95	$2.97	$434.17	$1,006.20	$71.62
Columbia Energy Power Marketing Corporation Columbia	$35.73	$89.60	$6.42	$428.76	$1,000.32	$76.98
FirstEnergy Services Corp FirstEnergy	$36.49	$89.26	$6.67	$437.75	$1,009.79	$66.04
PPE Energy Appalachia First Energy Club	$41.32	$94.08	$1.83	$495.81	$1,083.96	$9.87
PPE Energy Appalachia First Energy Club - web based billing	$39.34	$92.09	$3.81	$471.91	$1,060.06	$33.97
Allegheny Energy Services Allegheny Energy	$36.93	$89.70	$6.22	$443.12	$1,014.18	$52.86
Dynegy Energy Dynegy	$36.40	$89.39	$6.67	$437.76	$1,009.79	$66.04
Mack Services Group Mack Plus	$37.67	$90.44	$4.46	$452.09	$1,024.11	$52.71
Rocky Mountain Energy Resources Eco Smart	$39.54	$92.31	$2.61	$474.48	$1,046.49	$31.33
Rocky Mountain Energy Resources Choice Blend	$46.35	$99.02	($4.10)	$556.19	$1,127.06	($49.24)
Rocky Mountain Energy Resources Nature's Choice	$60.73	$113.50	($8.58)	$608.74	$1,180.77	($102.96)
Dominion Energy Dynegy Power 100	$40.98	$93.72	$1.19	$491.45	$1,063.50	$14.32
Dynegy Energy National Power 50	$37.29	$89.99	$4.92	$446.70	$1,019.74	$58.08
Energy Cooperative Associates of Pennsylvania ECAP	$36.15	$88.84	$6.06	$433.84	$1,006.87	$71.06
Atlantic Energy Corporation PPEC Choice	$34.24	$87.01	$7.91	$410.90	$982.30	$94.89
Total Gas and Electric, Inc. TGE	$37.97	$90.74	$4.18	$455.66	$1,027.86	$50.13
Power Choice Power Choice	$39.63	$92.68	$2.23	$475.36	$1,049.39	$27.83
Energy Cooperative Association of Pennsylvania Low Income, Disabled, Seniors	$36.73	$91.50	$6.42	$429.80	$1,003.83	$76.99
Energy Cooperative Association of Pennsylvania ECAP - 100% Renewable	$46.11	$101.87	($3.96)	$541.36	$1,119.30	($35.49)
Dynegy Energy	$36.40	$89.39	$6.67	$436.77	$1,009.79	$71.62

Exhibit F

Selecting an Offer



Mr. BARTON. Thank you, Mr. Michaels, for your presentation.

We are going to yield to Mr. Stearns to introduce our next witness to the subcommittee.

Mr. STEARNS. Thanks for the courtesy, Mr. Chairman. I just want to welcome a fellow Floridian to the panel. I understand that he is an owner of a McDonald's franchise in Tampa, Florida, and also has his company, a family owned business, and it is nice to see a taxpayer as a witness here. And, so I appreciate your testimony and I want to welcome you as a fellow Floridian. Thank you, Mr. Chairman.

Mr. BARTON. Mr. Casper, your statement is in the record and we will recognize you for 5 minutes.

STATEMENT OF BLAKE CASPER

Mr. CASPER. Thank you, Mr. Chairman.

Mr. BARTON. Pull that microphone up to you, if it will come any further. I don't know if it will. There you go.

Mr. CASPER. Thank you, Mr. Chairman, members of the committee. My name is Blake Casper, and as Mr. Stearns mentioned, I am a McDonald's franchisee in Tampa, Florida. We are selling beanie baby number 6 today. Our company, Caspers Company, is a family owned business, and I pay electric bills for both my home and my business, and I speak to you today as both a residential and small business consumer.

I have been asked to come here today to discuss the need for consumer protection mechanisms in a competitive retail electric market and I can respond succinctly. The ability to choose my electric supplier is my protection. In Florida we have piles of statutes, rules, and hundreds of government employees to regulate the electric utility industry and allegedly protect me and other consumers, yet I lack the one tool that I need: the ability to choose my electric supplier.

Our company buys thousands of items every day, ranging from hamburger buns, soft drinks, napkins, to insurance policies and legal services, and it all works fine without the help of special government protections or commissions. It works because our suppliers must compete for our business in a fully competitive market, and if you wanted to protect electric consumers, you only have to do one thing: Clear away the regulations and allow the creation of a fully competitive retail electric market where all electric suppliers can compete on a level playing field.

To ensure a level playing field, I have just three suggestions. One is to require the separate ownership of generation of transmission and distribution systems. This is the only way to ensure that incumbent utilities do not have an unfair advantage over new suppliers wanting to compete for our business. Our french fry supplier does not own our only distribution route into our stores, and neither should our electricity supplier.

No. 2, protecting the restrictions on customers' ability to purchase through aggregation. In our business, a major source of savings which allows us to keep menu prices low is the ability to combine our buying power with other McDonald's franchisees.

No. 3, don't stick us with huge stranded cost bills. In order to have full and fair competition, you can't mandate a monthly sub-

sidy to incumbent utilities to compensate them for inefficient and costly plants.

I may not understand all the technicalities of what constitutes so-called stranded costs and how to calculate them, but I do understand this: In our business nobody guarantees us anything. Business conditions and regulations change all the time, and we adapt. If we make a bad investment, we pay for it, not our customers.

I understand the electric utilities' arguments about their duty to serve and stranded investments, but, frankly, I am not sympathetic. They have enjoyed a government-protected monopoly for decades, and they have been given years to prepare for retail competition. It sounds like a pretty good deal to me. If you want to give me a hamburger monopoly for all of Tampa Bay, I will take it. In fact, I would even pay for it, and I will sign on the dotted line today that, if you decide later to allow competitors, I won't come asking you for yet another handout.

We do need your help. The electric utilities in Florida are using my money to fight against consumer choice and other consumer-friendly initiatives at every step of the way. They are filing lawsuits to prevent the introduction of new, low-cost clean power plants. They are fighting attempts to reign-in the rates when they earn record profits, and they use their considerable political weight to fight against the mere study of customer choice in Florida.

Our business simply cannot afford to hire a platoon of attorneys to fight them both in the Florida legislature and at the Florida Public Service Commission. Small electric consumers desperately need a date certain for customer choice in the States and a fully competitive market. Mr. Chairman, customer choice will provide the best protection for small consumers.

[The prepared statement of Blake Casper follows:]

PREPARED STATEMENT OF BLAKE CASPER, CASPERS COMPANY

Mr. Chairman and members of the committee, my name is Blake Casper. I am an owner of a McDonald's franchise in Tampa, Florida. Our company, Caspers Company, is a family-owned business. I pay electric bills for both my home and my business, and I speak to you today as both a residential and a small business consumer.

I have been asked to come here today to discuss the need for consumer protection mechanisms in a competitive retail electric market. I can respond succinctly—the ability to choose my electric supplier is my protection. In Florida we have piles of statutes and rules and hundreds of government employees to regulate the electric utility industry and, allegedly, protect me and other consumers. Yet I lack the one tool I need—the ability to choose my electric supplier.

Our company buys thousands of items everyday, ranging from hamburger buns, soft drinks and napkins, to insurance policies and legal services, and it all works fine without the help of special governmental protections or commissions. It works because our suppliers must compete for our business in a fully competitive market. If you want to protect electric consumers, you only have to do one thing: clear away the regulations and allow the creation of a fully competitive retail electric market where all electric suppliers can compete on a level playing field. To ensure a level playing field, I have just three suggestions. These suggestions are based on the attributes of the markets where our other vendors compete for our business:

1. *Require separate ownership of generation and transmission and distribution systems*—This is the only way to ensure that the incumbent utilities do not have an unfair advantage over new suppliers wanting to compete for our business. Our french fry supplier does not own the only distribution route into our stores and neither should our electricity supplier.
2. *Prohibit any restrictions on customers' ability to purchase through aggregation*—In our business, a major source of savings which allows us to keep menu prices low is the ability to combine our buying power with other McDonald's

franchisees. This allows us to command the lowest possible price and the best quality. Electricity is the one purchase we can't aggregate. I keep hearing that under competition, only the so-called "big dogs" will win, and that residents and small businesses like ours will see their rates go up. The fact is, under the present regulated system which supposedly protects us, we already pay more than big industrial companies. In Florida, residents and small businesses consume three times more electricity than big industry. With that immense buying power, both residents and small businesses can pool their purchases to command a better prices and service.

3. *Don't stick us with a huge stranded cost bill*—In order to have full and fair competition, you can't mandate a monthly subsidy to incumbent utilities to compensate them for their inefficient and costly plants. I may not understand all the technicalities of what constitutes so-called "stranded costs" and how to calculate them, but I do understand this—in our business, nobody guarantees us anything. Business conditions and regulations change all the time, and we adapt. If we make a bad investment, we pay for it, not our customers. I understand the electric utilities' arguments about their duty to serve and stranded investments, but frankly, I am not sympathetic. They have enjoyed a government-protected monopoly for decades, and they have been given years to prepare for retail competition. Sounds like a pretty good deal to me. If you want to give me a hamburger monopoly for all of Tampa Bay, hey, I will gladly take it. In fact I would even pay for it. And I will sign on the dotted line today, that if you decide later to allow competitors, I won't come asking for yet another handout.

Certainly, more can be done to ensure a level playing field for the electric market which will protect consumers, but these are the major considerations to which I would give the most weight.

We do need your help. The electric utilities in Florida are using my money to fight against consumer choice and other consumer-friendly initiatives at every step of the way. They are filing lawsuits to prevent the introduction of new low-cost, clean power plants in Florida which would not go into any utility's rate base. They are fighting attempts to reign in their rates when they earn record profits which exceed their regulated rate of return. And they use their considerable political weight to fight against the mere study of customer choice in Florida.

The electric utilities have rafts of lawyers and lobbyists and a whole lot more money than we do. Our business simply cannot afford to hire a platoon of attorneys to fight them both in the Florida Legislature and at our Florida Public Service Commission. Small electric consumers desperately need a date certain for customer choice in the states and a fully competitive market along the lines I have suggested to you today. Customer choice will provide better protection for small consumers than new regulations and more bureaucracies.

Mr. BARTON. Thank you, Mr. Casper, for that warm and friendly Ronald McDonald statement.

I think you are related to Mr. Stearns. That is what I told him. No, we appreciate your forthrightness.

We would now like to welcome Mr. Jack Brice, who is a member of the board of the American Association of Retired Persons, for which organization I will be eligible in about 6 months.

STATEMENT OF JACK BRICE

Mr. BRICE. We will welcome you to the club.

Mr. BARTON. Your statement in its entirety is in the record, and we recognize you for 5 minutes.

I do want to compliment Mr. Casper; he finished his in about 4½ minutes. We appreciate that.

Mr. BRICE. Mr. Chairman and members of the committee, AARP thanks you for this opportunity to present our views. AARP believes that the fate of residential consumers in a restructured electric industry will depend upon whether the new market structure gives them a fair chance to receive the benefits of competition, ensure that their interests are represented in the market, and will provide fundamental protection against abuse.

Given the vulnerability of older residential ratepayers, AARP believes that any Federal legislation to restructure the electric utility industry must ensure that residential customers share in the benefit of competition, include strong consumer protection provisions, and establish a universal service policy to assist low-income and high-cost area consumers.

AARP understands the reluctance of many Members of Congress to institute new programs. Historically, new programs in the utility area either increase taxes on the class of consumer who can least afford it or force a reallocation of resources that may seriously jeopardize other valuable programs. Therefore, much of what we are proposing today can be accomplished within the jurisdictional authority of existing governmental entities.

AARP believes strongly that residential customers have benefited, or should benefit, from restructuring. An important way in which residential consumers can reap lower rates from the outset is through aggregation. AARP supports a Federal role in facilitating aggregation, and on the State level we have been promoting municipal aggregation with a volunteer opt-out procedure. However, we also favor allowing nongovernmental entities to become aggregators as well, as is provided for in the administration's bill and, as we understand it, in legislation being drafted by members of this subcommittee.

While we do not envision aggregation being a panacea for all residential consumers, it can provide an alternative for those who are interested. Facilitating aggregation is not enough within itself. Additionally, consumers must be educated. These efforts will likely come from aggregators, but should also come from DOE, FTC, and groups like AARP.

For competition in the electric industry to work, strong consumer protections to prevent abuse in the competitive market are necessary. For the benefit of older consumers, and indeed all ratepayers, Congress should take a proactive approach to addressing the specific problems of slamming, cramming, and consumer confusion regarding billing statements. We feel strongly that a failure to provide solid consumer protection provisions will only lead itself to abuses down the road.

AARP recognizes that many members of this committee are well aware of the problems that have occurred as a result of slamming and cramming practices in the telecommunications arena. We applaud the full Commerce Committee for doing its part to address these problems by approving anti-slamming legislation in the last Congress. Unfortunately, we have no doubt that similar practices will develop as the market for retail electricity evolves.

Now, at this juncture, Congress has a unique opportunity to nip fraudulent activity in the bud before it has a chance to fully flower. Anti-slamming and anti-cramming provisions will go a long way toward addressing these abuses.

A truth-in-billing requirement is of paramount importance to consumers and would serve the best interests of electric utility service providers as well, similar to the recently approved FCC order, the development of which AARP played an active role. The truth-in-billing provision addressing electric utility bills will provide consumers with a wealth of valuable information. It is undeni-

able that, as various industries continue to converge, and the utility billing statement becomes a more attractive means to bill for services, consumers are likely to become more and more confused by what they are being asked to pay for.

Mr. BARTON. You have also had your first click, Mr. Brice. So if you could try to summarize it——

Mr. BRICE. I shall.

Mr. BARTON. Please, sir.

Mr. BRICE. AARP strongly believes that providing such information to consumers will alleviate confusion, making them more likely to become participants in the competitive marketplace.

Mr. Chair, we thank you for this opportunity to present our views, and we will be looking forward to the opportunity to working with you.

[The prepared statement of Jack Brice follows:]

PREPARED STATEMENT OF JACK BRICE, MEMBER, BOARD OF DIRECTORS, AARP

Mr. Chairman and Members of the Committee: My name is Jack Brice and I am a member of AARP's Board of Directors. We thank Chairman Barton and the other members of the Committee for inviting us to present our views on what we feel are the necessary consumer protection components to any federal legislation dealing with the restructuring of the electric utility industry.

AARP's membership has a vested interest in the move towards competition now underway in the electric utility industry. For everyone, electricity is a basic necessity of modern life. The cost of this necessity, however, can comprise a significant portion of an average consumer's personal expenditures. In fact, energy costs can take up to as much as 5 percent of the median-income household's monthly budget. Older Americans are particularly vulnerable to rapid increases in energy prices. Although older persons consume approximately the same amount of residential energy as non-elderly Americans do, they devote a higher *percentage* of total spending to residential energy. Among low-income older families, an average of 17.5 percent of their income is spent on residential energy. Too often, low-income older persons are faced with the choice of risking their health and comfort by cutting back on energy expenditures or reducing spending for other basic necessities.

Proponents claim that retail competition will bring about substantial rate reductions for all ratepayers, including the elderly. A corollary to this theory is that consumers will receive other benefits of retail competition as well, including the ability to shop among competitive providers, and to take advantage of a new array of products and pricing options.

However, as states are making decisions to open their respective markets to competition, it is unclear whether the ability to choose a power provider is leading to rate reductions for all consumers. In fact, while the move to competition almost always benefits larger businesses, its impact on individual, household consumers is less certain.

The fate of residential consumers in a restructured electric industry will depend on whether the new market structure gives them a fair chance to receive the benefits of competition, ensures that their interests are represented in the market, and provides fundamental protections against abuse.

Residential ratepayers, and particularly older Americans, thus face very significant risks—and few, if any, assured benefits—in the move to retail competition in the electric power industry. These risks go beyond the ability to benefit from choice. They also include risks associated with confusion, deception and fraud.

AARP's concerns have led us to question the need for federal legislation in the past. However, as restructuring activity in the individual states continues—as we have testified that it should—some issues have crystallized that we believe require Congressional action.

Given the vulnerability of residential ratepayers, AARP believes that any federal legislation to restructure the electric utility industry must:

- Ensure that residential customers are among the first to benefit from competition;
- Include strong consumer protection provisions; and
- Establish a comprehensive universal service policy, including a guarantee of affordability.

Before offering more specificity to these three general areas of concern, let me state that AARP understands the reluctance of many Members of Congress to institute new programs. Historically, new programs in the utility area threaten either to increase taxes on the class of consumers who can least afford it, or force a reallocation of resources that might seriously jeopardize other valuable programs. Therefore, much of what we will be proposing today is designed to be accomplished within the authority of existing government entities.

Residential Customers First

AARP believes strongly that residential customers should benefit from restructuring. We are pleased that legislation announced earlier this spring by the Administration begins to address the issue of residential customers sharing in the benefits of competition from the start. Likewise, we are encouraged to hear that legislation being drafted by Members of this Subcommittee may also provide relief for residential consumers.

The fact of the matter is that residential consumers are simply not as attractive to utilities as industrial customers are. If residential consumers are not among the first allowed to benefit from competition, it is hard to imagine a scenario where they would benefit in the long run.

One very important way in which residential consumers can reap lower rates from the outset is through aggregation. Aggregation in its simplest form will allow residential consumers from like communities or associations to pool their respective electricity needs, enabling them to negotiate lower rates from a power provider.

AARP supports a federal role in facilitating aggregation. On the state level, we have been promoting municipal aggregation with a voluntary opt-out procedure. However, we also favor allowing non-governmental entities to become aggregators as well, as provided for in the Administration's bill. While we do not envision aggregation being a panacea for all residential consumers, it can provide an alternative for those who are interested.

Facilitating aggregation is not enough in and of itself. Additionally, consumers must be educated. These efforts will likely come from the aggregators but should also come from the Department of Energy, the Federal Trade Commission and groups like AARP. Licensing requirements and consumer protection safeguards must also be put in place. As large aggregators are likely to operate on an interstate basis, it is incumbent upon the Congress to ensure that they meet certain threshold operational requirements and that deceptive, fraudulent or other illegal behavior not be tolerated.

Consumer Protection Laws

For competition in the electricity industry to work, strong consumer protection laws must be applied to the sale of electricity in a restructured industry. Low-income, non-English speaking and elderly consumers, in particular, will need very strong consumer protections to prevent abuse in the competitive market. For the benefit of older consumers and indeed all ratepayers, Congress should take a proactive approach to addressing the specific problems of slamming, cramming and consumer confusion regarding billing statements. We feel strongly that a failure to provide solid consumer protection provisions will only lend itself to abuses down the road.

AARP recognizes that many Members of this Committee are well aware of the problems that have occurred as a result of slamming and cramming practices in the telecommunications arena. We applaud the full Commerce Committee for doing its part to address these problems by approving anti-slamming legislation in the last Congress. Unfortunately, we have no doubt that similar practices will develop as the market for retail electricity evolves.

Now Congress has the unique opportunity to nip fraudulent activity in the bud, before it has a chance to fully spread. Anti-slamming and anti-cramming provisions like the ones included in the Administration's legislative offering will go a long way towards addressing these abuses. We also support providing the Federal Trade Commission (FTC) with the authority to enforce the law.

In addition to providing the FTC with the tools to counter slamming and cramming, there is another measure that will reduce incidents of fraud while providing the consumer with valuable and necessary information. A "Truth-in-Billing" requirement is of paramount importance to consumers and would serve the best interests of electric utility service providers as well. Not unlike the recently approved Federal Communications Commission (FCC) Order, in the development of which AARP played an active role, a truth-in-billing provision addressing electric utility bills would provide consumers with a wealth of information, in a form that is "user friendly."

It is undeniable that as various industries continue to converge, and the utility billing statement becomes a more attractive means to bill for services, consumers are likely to become more and more confused by what they are being asked to pay for. By providing a comprehensive, easy-to-read billing statement each month, a consumer can better track what services are being provided; who is providing them; at cost they are being provided; what additional taxes or charges are being imposed and who they can call if they have a dispute. Other items that should be displayed on the billing statement include information about interruptibility of service and information regarding the mix of resources used to generate the power. We also support the use of standardized language in describing fees or charges that are being imposed on consumers. AARP strongly believes that providing such information to consumers will help alleviate confusion, making them more likely to become participants in the competitive marketplace.

AARP also supports the creation of a consumer database to assist residential customers in obtaining information about retail electric utility providers. We would support this database being housed at the FTC, an agency with a tradition of excellent consumer protection.

Finally, we would ask that this Committee look closely at public policy developments in the area of privacy and ensure that consumers in a restructured electric utility environment are afforded protections similar to those being implemented in Pennsylvania.

Universal Service

As we have said previously, electric utility service is essential. It is arguably more important to the residential consumer than is telephony. Therefore, one of the cornerstones in any restructuring effort is the requirement that electric utility service be universal and affordable. A universal service policy must ensure basic electric service at a level of consumption that would meet the needs of residential ratepayers for lighting, heating, cooling, cooking, and recreation. Such service must be affordable for all consumers, which means that it must be discounted for low-income and high cost area consumers. In our view, affordability means that electricity rates do not strain the household budget.

AARP is concerned that in a competitive environment, less attractive customers will be adversely affected. While we recognize that there have been problems with the universal service program in telecommunications, we believe these problems need not carry over into the electric utility area. The Administration has made an attempt to address universal service through a proposed Public Benefits Fund. Our concern with this fund is that it renders low-income energy assistance an option, not a requirement. Further, we are concerned that the cost of the program may ultimately be borne by all consumers as a new tax. We recommend that the costs of implementing a universal service system be placed on all generators of electricity based on a standard formula and not on consumers via a line-item charge.

Conclusion

In conclusion, let me stress what AARP believes to be the Federal government's essential role in a restructured electric industry. First, facilitate aggregation so that residential consumers can benefit from the start. Second, enact strong consumer protection provisions, and third, develop a mechanism to ensure universal service.

Mr. Chairman, AARP continues to be concerned that restructuring could unravel the protections of regulation, while offering only uncertain improvements on the current structure. The work that you have done to highlight many of the inherent problems in the move to a deregulated environment over the last two months is to be commended. We are hopeful that the introduction of comprehensive bipartisan legislation will address many of our concerns and further advance the debate. On behalf of AARP, I thank you again for providing us with this forum to discuss the critical area of consumer protection. We look forward to continuing our active participation in this debate on both the federal and state level and to working with you in crafting solutions that will ultimately benefit not only our members, but also the nation as a whole.

Mr. BARTON. Thank you, Mr. Brice.

Before we recognize Mr. Cooper, I notice that a group of very intelligent and good-looking people just came in the room, and it turns out they are my constituents there at the back from Waxahachie, Texas. So go home and tell them that your Congressman is working very hard.

Congressman Hall has already laid claim on you, though. He wants you to move north to Rockwall. He says he likes you.

We recognize Mr. Mark Cooper, who is the director of research for the Consumer Federation of America.

STATEMENT OF MARK N. COOPER

Mr. COOPER. Thank you, Mr. Chairman. In addition to representing CFA here in Congress and before Federal agencies, I have actually testified at public utility commissions in 10 cases and at four State legislatures on behalf of CFA's members, such as AARP. So we have seen the problem from both sides, and I want to stress what I think this Congress must do in order to make this work.

We start from the purpose of restructuring. In the electric utility industry, we see it as the need to promote universal service in a more efficient manner. This industry is not broke, but it could work better. Service to the public is the ultimate goal; competition is only a means to that end.

At the same time, it is true in this market, as all other markets: Competition is the best form of consumer protection. Therefore, the most important thing that you can do is to ensure that we have a vigorously competitive market. No amount of consumer protection or targeted assistance will compensate for a fundamentally flawed market structure. We believe that competition is what this committee and the Federal agencies it authorizes can and should promote.

Nevertheless, consumer protection is important. Electricity is a vital commodity. It may never simply be just a plain, old commodity; it is too important to daily life. There are no close substitutes. We may need extra consumer protection forever. We certainly need it in the transition.

We think that the essential thing that the Congress can and should do is to promote competition in interstate markets. Transmission is an interstate function. No individual State can reach across its borders to regulate transmission.

The Congressman mentioned the airline industry and the trucking industry, and suggested that deregulation went better. Let me remind you that airports are essentially bottleneck facilities owned and operated by government entities. Highways are essential bottleneck facilities owned and operated by the government. The transmission system is a private highway, but it must be owned—operated, if not owned—in an open fashion to promote competition and ensure reliability. And that is why you are having so much trouble, because the essential bottleneck facility is not open. That is your first job; that is a Federal job, and you must do it well.

Second of all, the ultimate responsibility for national and regional markets, industrial organizations, resides at the Federal level. The interstate market will be interstate. No State can reach across and ensure a competitive structure. States cannot regulate those markets. You must ensure that the electricity market in the interstate and regional jurisdiction is competitive, has enough people so that we actually have choices. That is a Federal function, anti-trust function, but more, because in creating a market, Federal authorities must be concerned where new markets are thin

and subject to abuse. We had a create hue and cry about that last year.

Those are the two essential functions that reside at the Federal level. That is where you should devote your efforts and attention. If you fail at the Federal level, we cannot succeed at the State to have a competitive market, because States are not big enough—with the exception perhaps of Texas, maybe California—but they will rely on interstate transportation and movement of energy. That is your job.

Now there are shared responsibilities between the Federal and the State jurisdictions. We think licensing and standards are important. And insofar as there is interstate commerce, you must take a role there. Privacy is important. The Public Utility Holding Company Act prevents the abuse of interstate entities. Individual States cannot reach into neighboring States to regulate entities. So before you repeal PUHCA, you must have an alternative in its place. We prefer effective competition. We will consider State regulation. But you must have an effective alternative in its place because that is an interstate abuse.

Finally, with respect to privacy, slamming, and cramming, there is no doubt that there will be Federal issues. When we say that States and Federal jurisdictions should share responsibility, what we have in mind is a Federal minimum standard that States can improve upon, but we need a floor, a minimum level of protections that everyone gets, and then perhaps the States can do better.

Thank you, Mr. Chairman. We look forward to working with you.

[The prepared statement of Mark N. Cooper follows:]

PREPARED STATEMENT OF MARK N. COOPER, DIRECTOR OF RESEARCH, CONSUMER FEDERATION OF AMERICA

Mr. Chairman and Members of the Committee, my name is Dr. Mark N. Cooper. I am director of Research at the Consumer Federation of America (CFA). Founded in 1968, CFA is the nation's largest consumer advocacy group. Composed of over 240 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power and cooperative organizations, the Consumer Federation of America's purpose is to represent consumer interests before congress and the federal agencies.

CFA has an ongoing interest and involvement in national electricity and energy policy formation. Focusing on electric utility issues in the past decade, CFA has testified before Congress, filed comments in regulatory proceedings at the Federal Energy Regulatory Commission (FERC) and before several state commissions, served on advisory boards of the Office of Technology Assessment, filed *amicus* before the U.S. Supreme Court, taken part in informal dialogues with industry representatives, sponsored an annual electric utility conference and published several major research reports.

I. OVERALL GOALS OF ELECTRICITY RESTRUCTURING

The purpose of restructuring in the electric utility industry is to promote universal service in a more efficient manner than at present. Service to the public is the ultimate goal; competition is the means to that end. At the same time, the most effective form of consumer protection is vigorous competition. Therefore, the most important step in restructuring is to establish market structures and conditions that create the greatest chance for vigorous competition in generation for all market segments. No amount of "consumer protection" or "targeted assistance" can make up for a market that suffers from fundamental competitive flaws.

Nevertheless, consumer protection remains an especially important concern as this industry is opened to greater competition. Experience with electricity as a commodity is lacking both on the supply-side and the demand side, particularly as it affects direct sales to small customers. In the long term electricity will never simply be a "commodity." It is too vital to daily life and economic activity to shed all as-

pects of utility treatment. Heightened consumer protection may always be necessary.

II. PRINCIPLES FOR MARKET STRUCTURAL REFORM

A competitive market for electricity will be dependent upon an effective supply-side because as a necessity, the demand for electricity is relatively inflexible (the price elasticity is low). There are no substitutes for electricity in most applications. A competitive market requires many producers who are seeking to win customers with quality services at prices that are driven by their costs. By this definition, it will be difficult to make the transition from the current structure and there will be a number of electricity market segments that will not be subject to effective competition. Public policy should promote competition wherever it can be effective and continue regulatory protections where it cannot.

A. Promoting Competition

Minimize potential impacts of market power: Vertical divestiture—separating ownership of generation from ownership of transmission and distributions facilities—is the best method of preventing abuse of affiliate relationships. If vertical divestiture is not required, extensive authority to prevent abuse of affiliate transactions must be available including imposition of affiliate transaction rules and an affiliate code of conduct.

Regulators must have the authority to ensure non-discriminatory access to the transmission and distribution system. Non discriminatory access must include the imposition of "just and reasonable" rates for access.

Regulators must have the authority to monitor and investigate market conditions. The regulatory authority must include the ability to gather evidence, hold hearings and order corrective action, including penalties and restitution where abuse of market power is found.

Regulators must have the option of imposing price ceilings, conditions or limitations on sales. Regulators must have the authority to apply conditions or limitations on mergers or acquisitions within their jurisdiction, to the extent that the regulator finds it necessary to protect ratepayers, promote competition, or prevent anti-competitive actions.

Promote Competitive Opportunities for Small Customers. Restructuring must actively promote competition for residential ratepayers. There must be institutions and mechanisms in place to ensure that residential ratepayers can purchase low cost power. Facilitating the aggregation of small customers will reduce overhead costs.

B. Ensure Fairness In Remaining Monopoly Areas

Protect Ratepayers from Cost Shifting: Restructuring should allow the integration and coordination functions now performed by utilities to be performed by the system operator with benefits credited to the customers who do not to elect suppliers. Ensure that costs associated with transactions, including additional facility and management costs are borne by the parties engaging in the transactions. Ensure that residential customers bear no more than a reasonable share of network facilities and other joint and common costs incurred to serve all customers. Retain regulatory oversight over the metering and billing process

Minimize or reduce price discrimination: prohibit shifting costs from high volume to low volume customers. Prohibit cherry picking by requiring service providers to serve all customers in their chosen service territory.

Residential customers should not subsidize utility entry into new, competitive businesses and sufficient mechanisms to detect, prevent and correct such subsidization shall be established.

To ensure that all classes of customers benefit from restructuring, discriminatory policies must be prevented including non-discrimination within customer classes so that similarly situated customers must be treated similarly; and a user pays principle to ensure that entities or customer classes who cause costs to be incurred (who use facilities) and obtain the associated benefits should bear the corresponding cost burden.

Rates should not be deaveraged or rebalanced, to prevent shifting of costs onto those customers without competitive alternatives.

Minimize the impact of recovery of uneconomic costs: Require shareholders to bear their fair share of stranded costs. Ensure that any stranded costs that are recovered are paid for equitably by all customer classes, allocated by usage of stranded assets. Allocate uneconomic costs based on electricity usage (kilowatt-hours consumed), not other formulae that shift excess costs onto residential customers. Prohibit the transfer of costs from generation assets to transmission and

distribution assets as a way to collect stranded costs because such transfers allow large industrial customers to further avoid stranded costs, since they do not use the distribution system. Prohibit securitization of stranded costs because it locks in recovery of costs without an opportunity to "true-up" for over recovery.

C. Provide Effective Protection Against Holding Company Abuses Before Repeal of the Public Utility Holding Company Act

PUHCA provides essential consumer protections: PUHCA provides essential protection for competition and consumers in the electric utility industry in a number of ways. It bars utility acquisitions that could monopolize new territories or new power sources or which create risks to consumers or investors. It demands that utility acquisitions "serve the public interest by tending toward the economical and efficient development of an integrated public-utility system." It limits utility speculation in unrelated ventures, where that speculation imposes risks on electric customers. It guards against corporate structures that make state regulation more difficult. It prohibits interaffiliate transactions within registered holding company systems, except at cost. It requires advance review of certain bond issuances of registered holding company systems.

Premature repeal of PUHCA would expose consumers to abusive transactions: The fundamental consumer protections provided by PUHCA prevent a wide range of abusive transactions from taking place. Regulation of transactions under PUHCA is sufficiently rigorous to dissuade most utilities from engaging in multi-state, non-contiguous and diversified activities. As a result, PUHCA prevents the development of complex corporate holding companies that span many state and international borders and evade regulation. By imposing rigorous regulation, PUHCA effects a structural solution. Most utilities have not done certain things to avoid coming under PUHCA. If the commitment to consumer protection embodied in PUHCA is maintained, they will not engage in these activities.

Regulation cannot replace PUHCA's structural protections because we do not have a comprehensive state-federal scheme of regulation in place in this country by any stretch of the imagination. Before PUHCA is repealed we must be certain that state authorities have adequate power to provide the consumer protection function and markets should be open to competition.

III. UTILITY ASSURANCES FOR ALL CONSUMERS

A. Reliability of Supply

The introduction of competition into utility industries invariably raises quality concerns. Two sets of policies to ensure quality should be pursued.

Licensing and certification: Licensing and certification should cover several broad areas. All companies should be required to demonstrate their technical, financial and managerial capabilities to provide the services for which they seek certification. Histories of prior complaints and problems should be made available. Bonding should be required to cover penalties for failure to meet reliability and marketing standards. Penalties should be known in advance.

Standards: Standards should be set and rigorously enforced. There are at least two crucial aspects to implement this policy. First, minimum standards should be established and imposed on the marketplace. Second, penalties for failing to meet quality standards should be severe.

B. Certainty of Service

Utility Protections: Because electricity is a necessity all consumers must continue to receive utility protections. Terms and conditions must be regulated at the point of sale. Specific policies in this area include application, credit, deposit, disconnection, restoral of service, bill collection, dispute resolution, and partial payment policy.

Obligation to serve: The obligation to serve has been a cornerstone of utility service and should remain so. Every consumer should have a provider who has the ultimate obligation to provide the basic necessity service. This would include the responsibility to maintain the facilities necessary to deliver electricity, as well as the actual purchase and delivery of electric service. The basic service package should be available to all consumers at a reasonable cost.

IV. CONSUMER PROTECTION

A. Customer Choice

The cornerstone of consumer protection is consumer sovereignty. The ability of consumers to exercise informed choices in the marketplace is considered essential to the efficient functioning of a market.

Fair Marketing: Consumers must be assured that as they are forced to make purchase decisions about electricity, they are provided at least the same level of protection from fraud and abuse as they have today. Marketing fairness involves protection against abuse of consumers and provision of reasonable opportunities to benefit from the introduction of competition into the industry. If the marketplace becomes fully competitive, these protections may no longer be necessary. Balloting should be considered as a vehicle for executing choice.

Sales Practices: Customers must be protected against abusive marketing practices. Regulations should explicitly outlaw slamming/cramming (changing service providers or adding services without the written permission of the customer) and other fraudulent or abusive marketing practices (pressure tactics, bait and switch tactics, negative options, etc.) Electric service providers should be prohibited from coercing or inducing their customers toward the purchase of nonregulated goods or services from affiliated companies. Rules should be enacted on notification and language requirements. Standards for information included in marketing should be set. A cooling off period should be specified.

Consumer Education: Vigorous consumer education campaigns should be conducted including the development of materials to enable consumers to make effective choices. Initially, consumers should be alerted to the fact that competition is coming. They must be made aware that new decisions are coming. Consumers must be provided information on price, quality and features that facilitate comparisons across providers. Third party information should be developed.

Outreach efforts should be conducted. Each provider should be required to prepare a plan for consumer education. The plan should cover materials, outreach and monitoring. The Commissions should monitor the effects of education efforts

B. Transaction Safeguards

Privacy Protection: Information about billing, payment history and consumption patterns must be under the control of the customer. To the extent that exchange of such information is necessary for efficient billing, it should be made available to the parties with whom the customer has contracted for service.

Billing Practices: Delivery of bills and billing information should be stipulated. This should include frequency of billing and notice, information and billing detail, format and language requirements. Customers must receive fair and clear billing statements with uniform labels that disclose price, price risk, length of contract, supply mix and environmental pollutants and must have access to fair dispute resolution procedures; suppliers must comply with fair marketing practices.

C. Post Purchase Remedies

Resolution of Disputes: Without effective dispute registering procedures, abusive practices are likely to persist because of the difficulty of pursuing post-purchase remedies. Therefore, it is important to provide support for the registering of complaints. There are four steps in the complaint process—intake, investigation, resolution, and redress.

Companies should be required to provide 800 number services and notification of dispute procedures. The lead state consumer protection agency should also have a centralized dispute handling service. Policies to protect consumers from unfair or rapid loss of service or pressure tactics during the adjudication process must be in place.

In the transition to competition, it is important to require all sellers to be certified and licensed. This will ensure that they are subject to the consumer protection policies. It is a central step in ensuring that they adhere to reliability policies and consumer protection policies.

D. Enforcement

General Authority: Each of the policy areas outlined is intended to prevent or discipline abusive practices without enforcement. This has not proven adequate in other industries. Therefore, vigorous enforcement is necessary. Penalties must be sufficient to discourage abuse. Exemptions of electricity services from consumer protection statutes should be lifted and electricity should be subject to the full force of consumer law. Customers must have a private right-of-action, including class actions, for enforcement and damages.

Jurisdictional responsibilities: The transformation of an industry as fundamental to modern society as electricity requires coordinated and active involvement of all levels of policy making.

It is clear that federal authorities have primary responsibility to ensure that the interstate jurisdiction supports competition and protects consumers. Transmission is an interstate function. Markets simply cannot perform reasonably if the interstate movement of power is impeded. Open access cannot be a voluntary activity. Ensur-

ing that the highways of commerce are open is a fundamental governmental activity.

Federal authorities also clearly have ultimate authority for the competitiveness of markets. These are interstate markets and no state can reach across its borders to determine industry structure. Federal agencies have that responsibility. In the transformation of the industry, federal authorities cannot just rely on antitrust laws, although it is clear that concentration in the industry must be prevented. Federal authorities must be active in monitoring markets and establish circuit breakers as markets are formed.

To the extent that interstate activity creates problems for state authorities, as addressed in PUHCA, federal authorities must take action.

Mr. STEARNS [presiding]. Thank you, Mr. Cooper.

Next is Betty Jo Toccoli, Chair of the Small Business Alliance for Fair Utility Deregulation. Welcome, Betty.

STATEMENT OF BETTY JO TOCCOLI

Ms. TOCCOLI. Good morning.

Mr. BARTON. I met with Mrs. Toccoli in California. So we are very appreciative that you would make this trip here today.

Ms. TOCCOLI. Thank you.

Mr. HALL. And, Mr. Chairman, she's able to cross State lines. She came to my home town in Texas and held hearings, and gave us the benefit of her knowledge. I thank you for having her.

Mr. STEARNS. Yes, sure.

Ms. Toccoli, please present your opening statement.

Ms. TOCCOLI. Thank you very much. We very much appreciate the opportunity to be a participant in these hearings. We want to thank the chairman and the committee members for your efforts to include all stakeholders.

I not only cross States lines; I was an early participant from day one at the table in the negotiations in the California rate structuring, which is where I live. I have had the opportunity, through the Small Business Alliance, to help educate and advocate across many States throughout our country.

Small business supports electric restructuring. We feel strongly that all customers have a right to choose their electric provider without mandated switching or mandated aggregation. We think aggregation is a good possibility for us to lower our costs.

We have, as small business people, a tremendous stake in this process. I am a small business owner, and it can work out to lower my costs or it can work out to increase my frustration as a small business owner. As you have already heard, we really do not have the opportunity to have multiple attorneys and advisors to advise us on how to make these decisions. We believe rules should protect consumers, including small business consumers, not competitors.

We are particularly concerned about the rural small businesses, and even some suburban businesses, because we think they are particularly vulnerable. Certainly consumer protection and the right to choice is important for these businesses.

We do believe that the lead will be taken by the States, and should be, and particularly in the area of consumer protection. But we think there is an appropriate role for the Federal Government, particularly in the area of FERC, on the reliability grid, and on the FTC in consumer protection.

Some of the things that are extremely important to us in consumer protection are strict minimum standards for safety, reli-

ability, financial responsibility, and technical competence. I think our original fears of reliability and safety, at least in California, have kind of gone away. We think those are being very well-handled.

What we have discovered, next to our first issue of choice, is the issue of consumer protection. I have had the opportunity to work with NARUC on some of the Consumer Services Division's area, and I am very pleased to tell you that commissioners are really reaching out to work with us on small business consumer protection as well as residential.

We also think that there should be strict rules prohibiting unfair and deceptive practices and respecting consumer choice. I might tell you that in the small business world we don't call it slamming; we call it shocking.

We do want to protect the right for consumers to have redress, and this needs to be timely, inefficient, and very easy. In this area we have promoted small business ombudsmen in the utility commissions. We protect the right to be informed.

And last, but not least, probably the most important area for the small business community is the proper education. Small business owners do not receive education in the same manner as other consumers, and you need to work with small business organizations, the Small Business Administration—to achieve these goals.

Again, I want to say thank you. You have a big job ahead of you. We would like the opportunity to continue to work with the committee, Members of Congress, and all the stakeholders to make electric deregulation work for all. Thank you.

[The prepared statement of Betty Jo Toccoli follows:]

PREPARED STATEMENT OF BETTY JO TOCCOLI, CHAIR, SMALL BUSINESS ALLIANCE 4 FAIR UTILITY DEREGULATION

Good Morning, I'm Betty Jo Toccoli, a small business owner of a financial services firm and as President of the 180,000 member California Small Business Association was involved in the California deregulation from the beginning. I am also Chair of the Small Business Alliance 4 Fair Utility Deregulation (SB4). The SB4 was formed by delegates from across the USA to implement one of the issues from the 1995 White House Conference on Small Business—utility deregulation. We are a grassroots, volunteer non-partisan and non-political organization with the purpose of educating and advocating for small business on this important issue.

We appreciate the opportunity to present the consumer protection views of small business before this committee. No doubt, you know this is the celebration of Small Business week here in our Nation's Capital. Thank you Chairman Barton and committee members for your efforts to include all stakeholders in these important hearings.

Small business supports the efforts of restructuring the electric industry. We believe all customers (small and large) (business and residential) should have the right to directly choose their electric service provider.

The purpose of restructuring the electric utility industry is to allow free market forces to operate in order to benefit all customers. In the past, when regulators attempted to divide the natural gas market between "core" (industrial) and "non-core" (small business and residential) customers, prices dropped for core customers who were given direct access to competitive gas supplies but remained high for non-core customers who were not given access to competitive choices. In a truly competitive market, *every* customer must have the right to choose.

Small businesses have a tremendous stake in the electric restructuring process. On the one hand, because of competition, they could reap substantial benefits through lower electric bills. On the other hand, they could be victimized by abusive marketing practices, receive poorer service and encounter other problems in a changed and confusing electric marketplace. We believe rules should be put in place to protect consumers, not competitors. While large users may be the first to see im-

mediate benefits, it is the small users that stand the risk of having the most to lose if restructuring is not done correctly.

We are particularly concerned about the many rural and sometimes suburban small businesses and their right to choice and a competitive market. Small business is known as the job creators and driver of the economy and these rural small businesses are particularly vulnerable as we move through restructuring.

SB4 strongly believes that states should take the lead in restructuring their electric utility industries. We believe that our voice will be better heard at state commissions and they will be in the best position to respond in a flexible and timely manner to the needs of consumers in their particular community.

We do recognize and support a role for the federal government particularly reliability of the grid through FERC and consumer protection under the FTC.

Strict Minimum Standards for Safety, Reliability, Financial Responsibility and Technical Competence.

Small business owners need clear and consistent rules to ensure that all providers meet minimum standards for safety, reliability, financial responsibility and technical competence. The right to choose a provider who may be unsafe, unreliable, insolvent, or incompetent for electric service is not a meaningful choice for small business owners.

To protect consumers and avoid confusion, we also need consistent rules. A customer's right to safety, reliability, fair marketing practices, price and service information, fair and accurate billing and a speedy dispute resolution should be the same whether the customer is dealing with a utility or a non-utility provider. At a minimum, all providers should be licensed and bonded to reduce the opportunities for fly-by-night operators.

Strict Rules Prohibiting Unfair and Deceptive Practices and Respecting Consumer Choice.

The marketplace must also ensure that all providers market their services in a fair and honest manner. Small business customers must also have the right to choose. This includes the right to be served by the existing utility if that is what they want. Once customers make their choices, those choices must be respected and there should be no unauthorized switching of their electric service or a forced aggregation scheme.

Protecting the Right to Consumer Redress.

Small business customers also require a fast and fair means of resolving disputes with providers. Every provider (utility or non-utility) should have a method of receiving and resolving customer complaints. Customers should have the right to speak to a live customer service representative. Ideally, most disputes should be resolved with one telephone call and within 10 business days. To be meaningful, the complaint process must be fast.

For small business owners, having reliable, ongoing electric service means the difference between being open and closed for business. Small businesses should not have to spend weeks, months or years to resolve disputes with providers.

Also, choosing an electric service provider, keeping track of their performance, and correcting service problems and billing errors should not be a full-time job. We need a hassle-free process that will not add to the overhead costs of small businesses.

Protecting the Right to Be Informed.

Small businesses will benefit from electric restructuring only if they are genuinely informed about the changes in the electric utility industry, their rights as consumers and how to make wise purchasing decisions in the competitive marketplace.

Many small businesses are simply too small to afford consultants, engineers, attorneys and other experts to independently advise them regarding competitive offerings. While a small business owner may know their subject matter; many are not sophisticated in utility related issues.

At the same time, these small businesses have narrow margins, limited capital and can ill afford a costly mistake. For these reasons, small businesses would benefit tremendously from relevant, reliable consumer information and require such information to reduce their vulnerability to marketplace abuse.

A critical component of small business consumer protection is the correct form of education. Statistical information has shown that small business owners make decisions in a different manner from other consumers. They count on respected peers and small business organizations to provide them with accurate information, so they can make informed decisions.

The U.S. Small Business Administration has conducted extensive research and possesses a wealth of information regarding how to reach small business owners.

Congress and States should draw on this resource and on small business organizations throughout the U.S. to educate small business owners about electric restructuring.

Small business owners should also have the right to be left alone. In California, the electric restructuring legislation provided for a Ado not call@ list that consumers could place themselves on if they were not interested in receiving telemarketing calls or other appeals from energy service providers.

We think that securing all of these rights is important if small business owners are to benefit from competition. Getting the details right will not be easy. It will require careful attention to local concerns, local developments and diverse communities.

On behalf of SB4 and the small business community, we again thank the Chairman and the subcommittee for taking the time to hear from us on this important matter. We are eager to work with the Chairman, members and your staff as you look at this important public policy issue.

Mr. STEARNS. Thank you very much.

You know, we are here to talk about consumer protection, and I understand that. However, Mr. Cooper, I think your point is well-taken. At least from the market power standpoint, the controlling of the transmission lines is the key because then that means there is competition if everybody has access. Then that means the consumer will have a lower price.

Let me ask the first question, Ms. Kolish: Can you identify consumer protection issues that cannot be addressed by the FTC under its existing authority?

Ms. KOLISH. Thank you, Congressman.

Mr. STEARNS. Can you pull the microphone a little closer to you. Thank you.

Ms. KOLISH. As we mentioned in our testimony, we think that the problems of slamming or cramming are not ones that our current authority might be adequate to address. As you know, slamming is the unauthorized transfer of a service provider.

In that respect, our regulatory authority, our rulemaking authority, is designed to be retroactive. We look to see if there are prevalent problems in the marketplace going on. We do not have the authority to proactively regulate. So we would not be able to do a rulemaking in that area to issue rules until we could show that there was a widespread problem already occurring in the industry. I think that is one of the reasons why the administration's recently introduced bill would give the FTC the authority to issue a rule on slamming, as a number of States have already done.

The second area we are concerned about is cramming, which we have seen in the telecommunications area. As I mentioned, it was our fifth most common complaint last year. We have been bringing lots of cases in Federal district court. We could proceed against that on a case-by-case basis, as we are in the telecom area, but rules that might help—those bills, I think as Ms. McCarthy said, are confusing to consumers, might be useful in preventing this. That is, if consumers can understand all the charges on their electric utility bill, they might notice unauthorized charges more readily, especially small ones that might go unnoticed when people just sort of routinely and automatically pay their bills.

Mr. STEARNS. On a State level—for example, California—slamming and cramming, is that occurring?

Ms. KOLISH. I am not certain that any——

Mr. STEARNS. On the electricity deregulation?

Ms. KOLISH. I am not certain anyone has seen cramming anywhere yet. We are anticipating this, unfortunately.

Mr. STEARNS. Okay, but you have seen slamming?

Ms. KOLISH. I think some States are worried about slamming. I am not certain they have seen it yet, but almost every State I am aware of has issued regulations on that.

Mr. STEARNS. All right. Then the next question would be, are there provisions within the State itself to prevent this?

Ms. KOLISH. It is entirely possible the State attorneys general or the PUCs, under their existing mini-FTC act or other regulations, could either proceed on a case-by-case basis or use their own rulemaking authority.

Mr. STEARNS. Your testimony discussed how the FTC experts expect electric suppliers will claim to be selling environmentally friendly electricity. Is environmental advertising a new issue for the FTC? Have you seen ads in other industries that make a similar environmental claim? How do you ensure that these claims are not false and misleading?

Ms. KOLISH. Environmental advertising, in fact, is very popular for many industries and services, and we, in fact, have been active in this area. In 1992, in cooperation with NAAG, the Commission issued Guidelines for the Use of Environmental Marketing Claims. We revised those guides again in 1996 to update them to account for market changes. We have also brought more than 30 law enforcement actions against marketers who abused their privileges and made misleading claims for environmental products.

Mr. STEARNS. Ms. Burns, a lot of people have expressed concern that, when we deregulate, that, for example, States will open their retail markets, will abandon the universal service obligations to low-income assistance folks. What that your experience in New York? Or did it continue its commitment to universal service and low-income assistance?

Ms. BURNS. Well, New York is committed to universal service, and we do have certain programs for low-income assistance. I think one of the key ways New York has protected low-income, as well as elderly, customers is through very strong requirements, due process requirements, notice requirements, before service can be terminated. They are quite extensive, and they are a matter of State law.

Mr. STEARNS. So you are saying low-assistance income folks have not suffered? And New York is making a particular effort to help them? Yes or no?

Ms. BURNS. What I am saying is that, with respect to incumbent utilities, New York has fairly strong protections against cutoffs, et cetera. Our experience, as I indicated, is too new with deregulation—it is just being phased-in—to know whether or not there will be problems with respect to competitive suppliers. Indeed, in New York the same kind of protections that we extend to customers of incumbent utilities in terms of service cutoffs, et cetera, there are fewer such protections currently extended to customers of competing providers. That is a concern of my office, for instance.

Mr. STEARNS. All right, my time has expired. Next is Mr. Hall, the ranking member from Texas. Mr. Hall.

Mr. HALL. Mr. Chairman, thank you.

Mr. Casper, I have listened to your testimony, and it was interesting. You say, "I may not understand all the technicalities of what constitutes so-called stranded costs and how to calculate." That is your position, isn't it, that you don't understand all the technicalities of stranded costs? Is that your testimony?

Mr. CASPER. Yes.

Mr. HALL. And you say, "If you want to give me a hamburger monopoly for all of Tampa Bay, hey, I will gladly take it. In fact, I would even pay for it, and I will sign the dotted line today that, if you decide later to allow competitors, I won't come asking you for another handout." If you were given an area and you were going to decide where to put another hamburger stand, you would do some kind of feasibility study, wouldn't you? Traffic and location and proximity to other hamburger stands, and things like that?

Mr. CASPER. Correct.

Mr. HALL. That would be the sensible way to do it?

Mr. CASPER. Sure.

Mr. HALL. You would have the right to do that, wouldn't you? It would be your obligation. If you had shareholders, you would owe them the obligation of being pretty choosey as to where you build this. You would need some information from someone that knew more about traffic and things than you did?

Mr. CASPER. We would run the risk, yes, sir.

Mr. HALL. Yes. So you also say, "I understand the electric utilities' arguments about their duty to serve stranded costs, but, frankly, I am not sympathetic." They don't always get to say where they build that extra stand, do they, because they are government-regulated? A little difference in your situation and theirs, is it not?

Mr. CASPER. The decisionmaking——

Mr. HALL. Yes.

Mr. CASPER. [continuing] for that investment is different.

Mr. HALL. Because they are regulated. Let me get a little more simple with you. You seem not to believe in the concept of stranded cost. What if I told you that you could have a McDonald's hamburgers monopoly, but you also had to feed everybody, the rich and the poor, with all the hamburgers they could eat at a price that was set by the government? You wouldn't like that, would you?

Mr. CASPER. If I was guaranteed the return that the utilities are guaranteed——

Mr. HALL. The return is the basis of working with the government, and the government working with you, and them setting a figure for your return, guarantee you a return.

Mr. CASPER. We would take the return that Florida Power and Light makes.

Mr. HALL. Okay.

And if they bought the hamburgers one at a time, and at a higher price, bought all the hamburgers they could eat at prices set by the government, if they bought them by the bag, or if they got them by the bag they got them at a lower price, so set up as a monopolist, you could go out and build enough hamburger stands to feed everybody in your monopoly area, and you would probably do that, would you not? If you are going to keep your monopoly, then you have to feed these folks as they move in and out.

Mr. CASPER. Congressman, in all due respect, I think the difficulty of the question, and my understanding of it, probably goes to prove that the system is broke, and that may be——

Mr. HALL. And you need to fix it, but when you fix it, you need to be fair about fixing it, and you would want whoever gave you that monopoly to be fair with you in fixing it?

Mr. CASPER. Yes, sir.

Mr. HALL. And you would be reasonable in that expectation. But, finally, you are required to put a store on every other block because the government wants convenience and they want to serve these folks. And you would know you could do it more efficiently with fewer, larger stores. So you would go out and borrow the money. But Tampa Bay is a pretty big place, and you have to keep building bigger and better stands just to keep up with the increase in population. And then when the summer is over and people aren't on the beaches, and your business drops, you still have to pay the carrying cost of these stores. So you have a peak-and-valley business for several years, but each year the peak gets a little bit higher, but you can only charge what the government allows you to charge. To get that monopoly, you have to do that. And your rate of return is not as high as if you had an unregulated stand, but then you have no competition.

But, wait a minute. Then 1 day the government decides it wants to deregulate the hamburger business. They are going to allow, of all things, Burger King, to come into the market.

Could I have some music in the background here?

And Burger King has promised that it can sell hamburgers for less with fewer stores, the kind of idea you had when they made you build a store on every corner.

Under these conditions, seriously—I don't mean to be playing with you—don't you really believe you would be looking for stranded cost recovery if you had contracted with the government to serve these areas, and all of a sudden the government pulled it out from under you, and somebody else was going to come in and cherrypick, or could come in and cherrypick? Wouldn't it be fair to be fair with them on stranded cost?

Mr. STEARNS. The time has expired.

Mr. CASPER. I think there are probably reasonable exceptions.

Mr. HALL. Okay. I thank you.

Mr. CASPER. Okay.

Mr. STEARNS. And I thank the gentleman. The chairman of the committee is recognized, Mr. Barton from Texas.

Mr. BARTON. Thank you. Well, I was told that Mr. Casper was going to make an announcement; because Congressman Hall was such a great guy, they were going to rename the Big Mac, the ''Hall Hunger Buster.''

But after those questions, they postponed that announcement. There is some talk of pulling McDonald's out of Rockwall, but I'll go to bat to make sure——

Mr. HALL. I like McDonald's, but I don't think they are going to force them to build any nuclear plants just to feed everybody in Tampa Bay.

Mr. BARTON. Anyway, Ms. Kolish, is it the FTC's position that the existing consumer protection laws at the Federal level are ade-

quate with the exception of some specific provisions on slamming and cramming, and perhaps disclosure? Is that correct?

Ms. KOLISH. Yes, that is a fair statement, Congressman.

Mr. BARTON. Okay. And, Mrs. Burns, I know you said that you represent New York, and don't necessarily represent the National Attorneys General Association, but is the FTC's position similar to your national association's position?

Ms. BURNS. I would say that, as far as NAAG is concerned, we do see the need for more particularized protections, especially in some of the areas I mentioned, such as uniformity of certain kinds of disclosures and privacy protections, et cetera. Whether those need to be Federal or State, I think is something——

Mr. BARTON. Well, is it safe to assume that, with some specific provisions like have just been outlined, that the National Association of Attorneys General would prefer that most additional consumer protection that is electricity-specific will be done at the State level?

Ms. BURNS. I think certainly the concern that attorneys general always have is twofold. One is we do not see the need—no one is suggesting it here, but concerns about preemption of State authority are always at issue. I think the concern that Mr. Cooper raised in terms of whether Federal protections cover the field or whether, as we prefer, they would complementary to, and supportive of, State enforcement possibilities.

Mr. BARTON. Thank you.

Mr. Michaels, are there other competitors in the segment of the marketing industry that you are in, or are you pretty much it in terms of electricity price shopping on a national level?

Mr. MICHAELS. There are other websites that list suppliers. There are other websites that have efficiency equipment. The aspects that we have of putting them together, and doing the evaluation for the consumer of their bottom-line bill are unique to our site.

Mr. BARTON. What would your answer be to Mr. Brice or Mr. Cooper if they were to say, well, it is great if you have got a home computer and you are computer literate, but what about the people that can't afford home computers or perhaps have them, but are afraid to turn them on because they don't know what to do with them? How would they take advantage of the information that you are making available?

Mr. MICHAELS. That is absolutely correct and a reasonable concern. The propagation of computers among all groups is increasing, and access to computers, if you don't have them at home, in public places is increasing as well. But a solution for other consumers that deals with a mail-back approach has been discussed in a few States, and perhaps there are other things you can do.

Mr. BARTON. Mr. Casper, I know that Mr. Hall was pretty explicit with you in some of his questions, but, as I understand your testimony, you are for competition, and you want as much information as possible to make the decisions about where to get your electricity supplies. Is that a fair summary of your testimony?

Mr. CASPER. Yes.

Mr. BARTON. Mr. Brice, on behalf of the AARP, I would summarize what you have said in your written statement is, again, you

all are for competition, but you want to make sure that there is adequate consumer protection, so that senior citizens are not taken advantage of? Is that a fair summary?

Mr. BRICE. That is correct.

Mr. BARTON. Okay. Mr. Cooper, I wasn't here when you were speaking. I was out in the annex talking to some of my constituents. But Congressman Largent said that you stated that the best consumer protection is competition and informed consent. Is that fair?

Mr. COOPER. Absolutely, and the Federal job is to make those interstate markets work in a competitive fashion.

Mr. BARTON. And I have talked to you personally, Ms. Toccoli, but, again, small businesses are afraid that they may not have the same opportunities to price-shop as some of their larger competitors. So the Small Business Alliance that you represent wants to make sure that it is a level playing field.

Ms. TOCCOLI. That is correct. We want choice, and we want protection for the choices we make.

Mr. BARTON. Okay, I yield back, Mr. Chairman.

Mr. STEARNS. I thank the gentleman. The gentleman from Ohio, Mr. Sawyer, is recognized for 5 minutes.

Mr. SAWYER. Thank you, Mr. Chairman.

The topic I would really like to explore as much as anything today is the notion of confidentiality and privacy. When we were working on healthcare legislation, it occurred to me that the two arenas where people are most concerned about protecting those two things are in terms of their financial information and their condition of health. They were operating under the assumption that, because medical professionals had taken an oath to preserve both of those highly valued commodities, that in fact that they were protected. But the truth of the matter may be something closer to an image that I used yesterday in this room, and that was of a bottle whose neck is tightly sealed, so tightly sealed that nothing can get in and out. That is that oath. But the bottom of the bottle is missing, and it is just leaking like mad. Healthcare information is bought and sold all the time.

Our banks seem to work pretty well. People walk up to a bank and they take cash out of their pocket and hand it over to somebody whose identity they don't know, with the confidence that they will get their money back, and perhaps even with interest, and that all they have to do is identify themselves, and that contract will be sustained.

I really am interested in hearing each of you talk about that component which, it seems to me, is very much at risk in terms of the information-sharing that may take place in a competitive environment where the information that is gathered as a result—I mean information about your hamburger business, for example, that would be of immense usefulness to your competitors, and the competition and the need to generate income may well put the information that is important in your competitive industry very much at risk in this environment.

Could you comment, those of you who care to, on the ways in which we might go about guarding that enormously precious commodity that I suspect will be very much at risk as you turn over

information that may have commercial value to competitive electric suppliers? Yes, sir?

Mr. COOPER. One of the problems that we have encountered in telecommunications is that the incumbent utilities think they own that information. They thought that, as part of the franchise, to go back to Mr. Hall's suggestion—and I would be glad to answer some questions on stranded costs, since I am an expert and have testified about a dozen times on stranded costs——

Mr. SAWYER. I would be eager to hear about that, but not in this question.

Mr. COOPER. With respect to privacy, they think they own that information, and whatever the legal basis was that, as the franchise monopoly might have had for that claim, in a competitive market they can't have it anymore, and that is the fundamental point.

So with banks, banks may never have thought they owned that information to do with that as they please; utilities did, and it will vary from State to State and utility to utility. But the fundamental point is that, as you transition from that franchise to a competitive situation, you have to make it clear that the customer owns the information. As the customer owns the information, the customer controls it, and it only gets revealed with the customer's permission. That is the fundamental change that has to happen.

Now the second thing, of course, is that, in order to run an electronic system such as this, you have to transfer certain information. The answer is that you should only transfer what is necessary for purposes of tendering a bill, and that information should only be used for the purpose of tendering the bill to collect for the specific services transacted.

Mr. SAWYER. What kind of custodial standards should apply in a circumstance like that, and should there be sanctions for violating them?

Mr. COOPER. Oh, absolutely. If you don't police it, the information is much to valuable; it will get abused. So you have to have vigorous, but you have to establish the legal principles that I own my information. The only information that gets transferred is with my permission, with the exception of what is necessary for billing. Having said that, you then have to police that and make sure that, when you get caught violating it, you pay the price. And, ultimately, the price should be you are out of business if you become a bad actor.

Mr. STEARNS. The gentleman's time has expired.

Mr. SAWYER. Could I ask one more question?

Would you make it a violation to have blanket sign-over, blanket release of information as a condition of being a customer of a company?

Mr. COOPER. Absolutely not. I mean, go back to your medical question; we have got a problem. But the answer is that informed consent, a great deal of thinking about that, it has to be informed. Yes, it can't be the bottom of a check that says, "Switch to me. I have $50," and there is a little language there that says, "Besides, I can give away and use all your information." Obviously, that is not informed consent. So you need good informed consent for the release of your information.

Mr. SAWYER. Mr. Chairman, thank you for your flexibility.

Mr. STEARNS. Yes, I thank the gentleman. The gentleman from Oklahoma, Mr. Largent, is recognized for 5 minutes.

Mr. LARGENT. Thank you, Mr. Chairman.

Mr. Casper, I would tell you that you had Mr. Hall right up to the boat, and then you let him get off the hook. Right up to the boat you let him get off.

Mr. Michaels, I am intrigued by your testimony that I have before me. I wanted to talk to you a little bit about—well, first of all, I want to ask you this question: You are in the software business. You sell software. Do you sell software to electric suppliers or do you sell the software to the end-user, the consumer?

Mr. MICHAELS. We have the Internet site, which is our own site, and part of the Internet site is the sale of energy-efficient products such as high-efficiency lights, and we make a margin on the lights that are sold on the site.

As retail choice proceeds, and there are many more retail suppliers, we do have a signup capability for the suppliers actually to be signed up as part of their evaluation on the site. And that is a potential component for us.

We also have offered utilities around the country the opportunity to sponsor the energy audit portion of the site, which is useful. One of the things we are talking about is the exchange of data on energy billing information between the utility and the energy audit portion. And that is currently——

Mr. LARGENT. So it is sort of multifaceted?

Mr. MICHAELS. It is multifaceted.

Mr. LARGENT. Someone told me about—in fact, one of the staff was talking about—a CD-ROM package that you give to consumers. Can you tell us a little about that? This is kind of a consumer option or something?

Mr. MICHAELS. Well, when a utility sponsors the energy audit portion, one of the options utilities have is actually to send the CD-ROM you were talking about in the mail to consumers. The typical situation is that a third of consumers who have computers will use it. Waiting for people to get to a website takes a lot longer, and that is the reason that they try it that way.

Mr. LARGENT. I see, and then what does the CD-ROM do?

Mr. MICHAELS. Evaluates all the energy options in their home, shows them how they can reduce their bill by installing energy-efficient equipment. It lets them track their bill over time to see what performance they are getting and the things they are trying to do, as well as view the energy guide site and see the supplier options in their area.

Mr. LARGENT. Now when you say, "tracks all their energy outputs, options," what did you say?

Mr. MICHAELS. Tracks their energy bills and sees if they are reducing their energy use normalized for——

Mr. LARGENT. Does it actually analyze, like how much electricity their washing machine uses or dishwasher?

Mr. MICHAELS. Yes, it conveys that to the user.

Mr. LARGENT. And is this the technology that will eventually lead to smart appliances and options that consumers have to run

their dishwasher or the washing machine at certain times of the day where the electricity prices would be lowest?

Mr. MICHAELS. Absolutely, the combination of having this capability on consumer's PCs, and the options available on the Internet, including retail options and connection to home-automation, like you are describing, should produce the most value for consumers eventually; it will take some time.

Mr. LARGENT. One of the other things in your testimony that I wanted you to kind of highlight was this idea that you had been tracking the selections that consumers were making on their suppliers. And that initially, it showed that consumers were choosing on price only, but as they got more familiar with the options that they had before them, that it says here, it says the size and location—it says, "In the end, none of them made their selection on price"; that issues such as energy-sources, minimum-contract terms, size and location of supplier were reacted to differently by consumers.

My question is, the idea is that the market really can drive this whole renewable energy idea, in and of itself. Is that true?

Mr. MICHAELS. There is a lot the market can do. When consumers have the information digested in a way that they can get their arms around it easily, they look to minimize the cost, the use of electricity and gas, and they also look to minimize their environmental impact in many cases.

And what we found in the focus groups that you are referring to is that consumers often started saying, "I am all driven by cost," but once they actually got into it, they said, "Well, maybe I can live with a few bucks a month more and do my part."

Mr. LARGENT. Yes. Thank you.

Ms. Burns, one of the issues that I hear from constituents in the State of Oklahoma, as we are moving toward restructuring in a low-cost State, is cross subsidization. And I am sure that maybe has been an issue in New York as well. And the issue, again, is allowing a PSO or OGB, or whoever the company, the IOUs are, that have developed this brand image, getting into the heating and air-conditioning or electrical contracting work as a subsidiary of their business. How has the State of New York dealt with that issue?

Ms. BURNS. I think there are really two issues. One is the competitive concern in terms of anti-trust law, which is, are they, indeed, cross-subsidizing? And obviously, one does not want that to occur. And I think our public service commissions, as well as our anti-trust law, would look to that.

I think the other issue, in terms of a more consumer protection concern, is where you have the unregulated subsidiary with a similar name to the regulated utility. We do have that situation in New York, and the concern there is that it may lead to confusion on the part of the consumer. I think, according to the FTC, actually FTC economists, who gave a little talk to the NAAG working group recently, I think in Nevada there was a study that their public utility commission did, which showed that consumers were confused if the unregulated subsidiary had a similar name, and that made them really prefer to go to that provider, as opposed to other competing providers who did not have the name; and that even putting a no-

tice in saying, "We have the same name, but we are an unregulated subsidiary," did not really effectively change that preference. So, currently, in New York, there aren't any rules to deal with this, that I am aware of, but it may be——

Mr. STEARNS. The gentleman's time has expired.

Ms. BURNS. [continuing] that we would have to have some.

Mr. STEARNS. The gentleman from Michigan, the ranking member of the full committee, Mr. Dingell, is recognized for 5 minutes.

Mr. DINGELL. First, this question, I think to the representative of the Consumer Federation, and also—I am having trouble seeing names—the gentleman immediately to your right. Gentlemen, we now, according to all accounts, have a situation where the householder is receiving, essentially, a subsidy under State regulation. If this bill passes, that subsidy will be repealed. Do you favor that?

Mr. COOPER. Well, the question of the pricing is essentially a State question.

Mr. DINGELL. Just a simple yes or no. Pardon?

Mr. COOPER. Pricing of electricity is almost entirely a State matter.

Mr. DINGELL. That is right.

Mr. COOPER. And the way that I would see Federal legislation, as I emphasized in my opening remarks, is that the Federal legislation should promote and support competition in the interstate jurisdiction, which will, in fact, we hope and believe, lower the cost of electricity to the purchasing entity in the State.

Mr. DINGELL. So the answer, then, is that you favor enactment of legislation which would repeal that subsidy to the householder?

Mr. COOPER. Well, I don't think Federal legislation can, in fact, repeal that subsidy.

Mr. DINGELL. You don't think so?

Mr. COOPER. Nor do I think it should. What I think it should do is promote competition, and the States will continue to deal with it. I would question whether there is a subsidy—we battle over that question at the State level on a continuous basis. So that if Federal legislation, is enacted, it should not tell the States what they can or can't do with the pricing. It should make the job of introducing effective competition easier. But the States will continue to deal with the question of how they allocate the costs——

Mr. DINGELL. In other words, you advocate deregulation only on interstate sales. Is that correct?

Mr. COOPER. The Federal jurisdiction should not tell the States that they have to deregulate in their markets.

Mr. DINGELL. All right now, Mr. Brice, what do you have to say?

Mr. BRICE. I would agree that the option should be the State's. We have been working with municipalities on some issues——

Mr. DINGELL. So you don't think that this is something that should be mandated by the Federal Government?

Mr. BRICE. That is true.

Mr. DINGELL. Now the lady on the end in the blue, ma'am, you said that this is something—and I can't see your name plate, for which I apologize.

Ms. TOCCOLI. Just call me "B.J."

Mr. DINGELL. Thank you. I apologize to all three of you.

Your comments were that this is a matter which should be dealt with at the State level?

Ms. TOCCOLI. Yes, we think the State should take the lead, at least for small business, certainly is where it is easier for us to communicate. We don't think it is a "cookie cutter" deal, and certainly consumer protection starts at the State level and can be supplemented by the Federal level.

Mr. COOPER. Mr. Chairman, may I add a point? If you include Texas, which I think is about to go in terms of restructuring, by my count, 55 percent of the electricity sold in this country is sold in States that have already restructured, more than half. So we are past the question of whether the Feds can move this. The Feds have been behind. The question now is, what can the Feds do to help the States that want to proceed to have an effectively competitive market and consumer protection? It is not the question of, can the Feds make restructuring happen? The States have done what they are going to do. We are past the tipping point. It is time to focus on the question of how this body can help that market work competitively to provide a little additional——

Mr. DINGELL. Is there any State that is not now working on deregulation or on restructuring of its utility market?

Mr. COOPER. I doubt you could find one that hasn't been grappling with it and deciding what to do.

Mr. DINGELL. I think that is a fair statement.

Yes, sir, what did you have to say?

Mr. CASPER. Mr. Dingell, excuse me. Florida recently—well, I shouldn't say recently—last year they voted down a bill for deregulation, and the year before that they voted down even the idea of studying deregulation in the State of Florida.

Mr. DINGELL. Who did that?

Mr. CASPER. The Florida legislature.

Mr. DINGELL. The Florida legislature?

Mr. CASPER. Yes, sir.

Mr. DINGELL. So, then the U.S. Government is being asked to go in and tell the Florida legislature what they ought to do, is that right, under this legislation?

Mr. CASPER. I don't know if we will see deregulation in the State of Florida unless that happens.

Mr. DINGELL. In other words, are you advocating that the Federal Government ought to come in like Big Brother and tell the Florida legislature what they ought to do?

Mr. CASPER. I think there should be, hopefully, in a Federal bill, a large——

Mr. DINGELL. I find myself curious. You appear to be espousing the position that the Florida legislature ought to be told by the Federal Government what the Florida legislature ought to do with regard to protection of consumers on electric utility prices. Traditionally, the State of Florida has regulated retail utility sales within its borders. I am curious why you are here advocating now that we should have the Feds come in and totally revamp the situation and tell the Florida legislature what to do. Obviously, you have a strong reason for this. What is it?

Mr. CASPER. Mr. Dingell, just like I said previously, it is that we in the State of Florida, unless there is a Federal mandate, may never see electrical deregulation.

Mr. DINGELL. Well, why is it that we should not trust the Florida legislature? You elect them down there; I don't. Is there something wrong with your legislature that you wish to announce today that would give us a basis for assuming we ought to step in and do away with the Florida legislature's control over electric utility rates within the State of Florida?

Mr. CASPER. I think it has a lot to do with the utilities in our State and their ability to facilitate legislation.

Mr. DINGELL. I am curious. Well, I guess I have used up about the amount of time I need.

Texas has already deregulated its utility prices, have they not?

Mr. COOPER. I believe there is a piece of legislation that has passed both houses and is likely to be signed.

Mr. DINGELL. Very good. Well, Mr. Chairman, you have been very gracious. Thank you.

Mr. STEARNS. I thank you the gentlemen.

Mr. BARTON. Would the chairman yield just for a second?

Mr. STEARNS. The chairman yields to the chairman.

Mr. BARTON. I just want to inform my distinguished ranking member—and I know that he knows this—there is no bill yet. There are a number of bills that have been introduced, and we hope to introduce a bill, but right now we are holding hearings to see if there is consensus on getting such a bill. So there is no pending bill before the subcommittee. And I know the gentleman knows that.

Mr. STEARNS. Next the Chair recognizes the gentleman from Arizona, Mr. Shadegg, for 5 minutes.

Mr. SHADEGG. Thank you, Mr. Chairman. I appreciate the testimony of all the witnesses and I would like to explore several particular details.

Mr. Michaels, I will start with you because I am fascinated by what you do. Let me see if I fully understand it. One of the things that I don't understand is how you are going to make a living at it because I haven't figured out—I mean, your website sounds fascinating to me, and if Arizona fully implements its deregulation efforts, which they are trying to do at the moment, I would love to log on and figure out, okay, where is the best deal for me and what are the options?

First of all, do you make some money off of the website itself? Can you make earnings off of the website or is that a kind of a lost leader for you?

Mr. MICHAELS. I would describe it as a loss leader at this point. The business of websites is attracting a lot of traffic, and having leadership in your area, the traffic by itself ultimately creates value in that you can have advertising on the site.

We do have two mechanisms in place that we expect will eventually be important: the purchase of energy-efficient products and services by consumers directly, and second, the ability for retail suppliers to have the actual signup service through the site itself. These things, when retail choice really takes hold and really comes into play, will be important for us. Right now, we do have this util-

ity sponsorship of the energy audit portion. It is a really important part of running the company right now.

Mr. SHADEGG. I appreciate that clarification. I will tell you a part of it must already be working. When you mentioned—I had actually read, ahead of time, your little bulb package, and I thought, "Sounds like a gimmick; it is not going to get me very far." But when you said that that package of bulbs, which I can buy for $58, could save me $350 a year, Mr. Shimkus and I both said, "Wow." I think he and I are ready to buy the product. So, I am certain that it does have a value.

I would also say that you, through the website, are obviously going to become, if you are not already, a leader in the area.

Let me understand another aspect of the business. Another aspect of the business is that you go to utilities who are in the market in the area, work an arrangement with them, where they sponsor the CD; is that right?

Mr. MICHAELS. The CD and the energy audit portion of the website. So that consumers, when they are doing an evaluation of their homes for energy efficiency, are doing something that is brought to them by us and the local utility.

Mr. SHADEGG. Well, I have a load controller in my home because energy used to be, when we built our home or bought our home, a huge component of the overall cost. Quite frankly, thanks to the industry, energy costs I think relative to other costs in our family's budget have gone down a little bit, and we aren't, I don't think, as good at using that load controller as we once were. I am sure if we get into another crisis, we will be paying more attention to it. But, any way we can save money is important to the Shadegg family budget.

I would like to understand-I think you have a unique perspective; you must have to deal with utilities in—how many different States?

Mr. MICHAELS. We are working with 26 utilities; I'm not sure exactly how many States, probably about 15 States.

Mr. SHADEGG. And the value of your service is dependent upon the reliability of the information you get from them?

Mr. MICHAELS. The value of our service to consumers?

Mr. SHADEGG. Yes.

Mr. MICHAELS. It is something they work with directly, so they eventually get a rate. They will go back and forth until they are very comfortable with it, which is one of the advantages of working interactively, which you can, on-line.

Mr. SHADEGG. Given that you work with lots of different utilities in a number of different States, do you have a perspective on what types of consumer protections—and since that is what this hearing is about—are, in fact, necessary? That is, what types of consumer protection, if any at all, should the government mandate? And if you care to break it down, are there things that you think the Federal Government has to mandate, in terms of consumer protection as distinguished from the States, in that area?

Mr. MICHAELS. Well, the area that we are most involved with is information privacy. We have an application for a new site, a voluntary program called "Trustee," sets a set of standards for websites and the use of consumer information, and not selling it,

not releasing it without permission. And those things are extremely important, I think, from the standpoint of the credibility of the Internet and information in the industry. Having something that required proper privacy would not only serve the public, but would serve companies like us who are doing it voluntarily.

Mr. SHADEGG. Are your customers, or the people that you can serve through the Internet site, or through the CD-ROM—are those only residential or do you have the same kind of service that you provide to business customers?

Mr. MICHAELS. Well, we have gotten residential started; we are focusing on developing a business side, which we hope to have up by the end of the year.

Mr. SHADEGG. Ms. Kolish, I would like to ask you, you have a unique responsibility——

Mr. STEARNS. The gentleman's time has expired.

Mr. SHADEGG. I thank the gentlemen.

Mr. STEARNS. The gentleman from New Jersey, Mr. Pallone, is recognized for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to ask Ms. Kolish a couple of questions.

Ms. Kolish, if Federal legislation was enacted that repealed PUHCA, but did not guarantee retail competition and protection against the exercise of market power, would such legislation benefit or harm consumers, in your opinion?

Ms. KOLISH. Oh, goodness, you are asking me a competition anti-trust question rather than a consumer-protection one, and I am not certain I can answer it without knowing a little bit more about what you have in mind.

Mr. PALLONE. Okay.

Ms. KOLISH. I mean——

Mr. PALLONE. Go ahead.

Ms. KOLISH. The Commission, obviously, believes that market power is an important issue that the Federal Government and the State governments need to take into account, and that you are not starting from a level playing field here.

Mr. PALLONE. Right.

Ms. KOLISH. And so that mergers and everything will need to be very carefully scrutinized.

Mr. PALLONE. But I mean, the question is, would you want, you know, whatever we do in terms of a PUHCA repeal to include some kind of guaranteed retail competition or protection against the exercise of market power? I mean, in other words, do you feel that that should be part of comprehensive legislation that repealed PUHCA, and, you know, what are the good or bad parts of that, if it is not in there?

Ms. KOLISH. I am not certain what the answer to that is.

Mr. PALLONE. Okay.

Ms. KOLISH. We can tell you more. What we do know is that the anti-trust laws that exist provide a great deal of protection already to competition and for consumers. Both the existing competition laws as well as the FTC act, which prohibits unfair methods of competition, provide the FTC and DOJ itself lots of authority in this area.

Mr. PALLONE. Okay. Well, let me ask you this: I have a second thing. Would deregulation of the electric utility industry, in and of itself, provide consumers with a greater level of protection, or would it result in greater challenges to the consumer in terms of guarding against unscrupulous practices or ensuring access to a reliable source of electricity?

Ms. KOLISH. Well, in this market, because consumers haven't had to choose, it probably will present greater challenges for them. But I think those are challenges that consumers with education can handle, and with the existing law-enforcement efforts, both Federal and State combined, that consumers will receive ample protections.

Mr. PALLONE. Okay. I wanted to ask one more thing of you, if I could. You mention in your testimony—it references the concept of green tags as an alternative to more traditional disclosure methods. Two questions: If you could give us some more detail about that, including how it would operate, and who would operate it? And then, you know, what are the advantages and disadvantages of green tag systems?

Ms. KOLISH. I think your question relates to how would marketers substantiate the claims they make about energy sources and pollution sources, and that it poses very difficult substantiation issues—having tracking systems in place so that a marketer will know, if they are claiming they have hydro-power, that they have actually provided hydro-power. An alternative that has been considered to the settlement process for figuring that out has been a tradable tag system, where energy would be tagged as being hydropower, and you could sell that tag the way you do other commodities.

Mr. PALLONE. Okay. Ms. Burns, the issue of billing information is sensitive, and on the one hand, many argue that a customer has a right to expect that their current billing information be kept confidential. On the other hand, some argue that all providers should have access to an incumbent utility's information about its customers; otherwise, the utility retains a significant comparative advantage over other potential providers. And I just wanted your opinion on that.

Ms. BURNS. Well, I think the privacy concerns that have been expressed by some of the members of this subcommittee are ones that we share. I will say in New York our office hasn't really had the opportunity to look at this in-depth. But I think they are issues that really do need to be looked at. I think privacy of billing information is important. The NAAG resolutions that we have mentioned support privacy protection for billing information. And I think the question is sort of, how do you go about ensuring that? And what do you look to? Do you look to other kinds of confidential requirements for other kinds of bills—telecommunication bills, for instance. And I think in New York, that is still kind of an open question, but I think privacy protections are very important.

Mr. PALLONE. Ms. Toccoli, did you want to comment on that, too?

Ms. TOCCOLI. Well, we have a little——

Mr. STEARNS. The gentleman's time has expired. Why don't you go ahead?

Ms. TOCCOLI. Small business has a little different issue, that we also need access to information on our businesses. It is so often held by the leasing or property management. So, we have mixed emotions because we also need access to some of that information. We are, though, for privacy.

Mr. PALLONE. Okay, thank you. Thank you, Mr. Chairman.

Mr. STEARNS. Thank you. The gentleman from Illinois, Mr. Shimkus, is recognized for 5 minutes.

Mr. SHIMKUS. And I've got my clock running; I know if Stearns is in the Chair.

Mr. Michaels, first a quick question for you: When you showed us your presentation and you talked about green power, how did you define green power?

Mr. MICHAELS. There is a voluntary "green E" certification that a number of the companies have applied for and gotten, and specifically that is what I was referring to.

Mr. SHIMKUS. Was nuclear power considered "green?" Mr. MICHAELS. I believe not. I don't really remember the specifics of the——

Mr. SHIMKUS. The only reason I ask is that it is probably an issue that we have to address somehow and for our legislation to have a—define: What is that? I always will argue that nuclear power, as far as emissions, is as safe as you are going to get.

There are questions about hydro-power. The administration's bill doesn't have hydro-power as "green." So, that is something that is a Federal issue that we are going to have to look at.

The question is going to be for Mr. Casper. Mr. Brice mentioned aggregation. Mr. Casper, in your testimony, you stated that Congress must prohibit any restrictions on the customer's ability to purchase power through aggregation. That makes, obviously, sense to me. I am a proponent of that. But, can you explain to me what type of restrictions we might put on that would prohibit aggregation?

Mr. CASPER. None other than the ones that are existing today, and the fact that we can't aggregate today.

Mr. SHIMKUS. Okay. Mr. Brice, as far as AARP, do you have any concerns that we are going to restrict the ability to aggregate?

Mr. BRICE. No, we just want to be sure that considers the consumer.

Mr. SHIMKUS. And, Mr. Brice, you also——

Mr. BARTON. Use the microphone, Mr. Brice, please, sir.

Mr. BRICE. Sorry.

Mr. SHIMKUS. You also talked about billing. And, of course, I wasn't here for the passage of the Telecom Act, but I'm on the Telecom Subcommittee, too, and I think we have to also be very careful about our Federal regulators. We have a universal service fund on bills, which is designed to provide subsidies for rural telephone, so that we can have full coverage. But that is also where the infamous "e-rate" fund is charged and that the proposal to increase the e-rate is charged there, all of which is an additional tax on the consumer which is not voted on by Congress.

So, I think your organization is right to be concerned about billing and to make sure that-I see billing as one of the biggest prob-

lems that came out of the Telecommunications Act that we haven't really cleared up. Have you got any comments on that?

Mr. BRICE. I agree. Well, first of all, it is confusing usually, and what we want to be assured of is that there is clear indication of what the segments and the components of the bill represent—if it is a tax, if it is a free charge, or whatever. We want to be sure that the consumer is aware of what they are being charged and asked to pay for.

Mr. SHIMKUS. Great. Thank you.

Mr. Cooper, which States did you testify in on their State dereg bills?

Mr. COOPER. I have testified in Tennessee, Indiana, and New York at the legislature. I have testified in restructuring hearings. Actually, I testified in Arizona, Pennsylvania, Virginia, and New York.

Mr. SHIMKUS. Pennsylvania and Virginia are the only two of those States that have passed restructuring?

Mr. COOPER. Well, New York has done restructuring administratively——

Mr. SHIMKUS. I mean by law.

Mr. COOPER. Arizona is almost done administratively.

Mr. SHIMKUS. Right.

Mr. COOPER. Legislatively, Pennsylvania certainly has, yes, and Virginia just passed it.

Mr. SHIMKUS. I was wondering if Illinois was in that group, but it is not.

Mr. Chairman, that is all I have for right now. I yield back. Thank you.

Mr. STEARNS. I thank the gentleman for yielding back. The gentleman from Mississippi, Mr. Pickering, is recognized for 5 minutes.

Mr. BARTON. Would the gentleman yield before that?

Mr. STEARNS. Absolutely.

Mr. BARTON. I just want to inform the audience, Mr. Pickering had a terrible day at baseball practice today.

He muffed several ground balls and complained about the calls when he was batting. So he has had a "bad hair day," so I want the witnesses to be nice to him.

Mr. PICKERING. Thank you, Mr. Chairman. I hope I got all the errors out of my system before the game time-the game day.

But I also want to thank the chairman for these hearings, and join with you in thanking Tom Sawyer for joining us, the co-chair for the working group; Mr. Dingell for appointing him. I think it one other indication of the momentum and the effort from the committee's work to move forward on this issue, and to find the agreement necessary to do so.

I have a couple of questions concerning jurisdiction and privacy. Mr. Michaels, I hope I can do it quickly enough that you would have time to demonstrate an audit, your audit capability. I believe you had one presentation on your web page. I don't think you got to your audit to show us your technology on that front.

But, first, let me ask Ms. Burns, on consumer protection, as we go forward in Federal legislation, is there anything that you see we need to do from a consumer protection point of view that the States

are not doing? Is there any direction, guidance, on issues? If so, what should we focus on in consumer protection?

Ms. BURNS. Well, first off, I think, as a representative of the State, we do like to think that our State powers with respect to consumer protection are pretty wide, pretty varied, and that we are pretty knowledgeable about what our consumers need. So that is sort of where we start from. Having said that, I do think that there is a Federal role. We don't say that there is no such role. We welcome a Federal role.

Mr. PICKERING. Would you give us specific examples of what you think would be helpful——

Ms. BURNS. Well, I think many——

Mr. PICKERING. If at all?

Ms. BURNS. [continuing] of the issues that have been touched on today are areas in which there may well be a role for a Federal protections as well as State protections, whether those be slamming, which, you know, has proven to be a big issue in telecom, whether it is the question of uniformity of disclosures.

I think as we move into a more national set of markets, which we don't have now, but as you have competing providers who are nationwide and not just intrastate, that Federal concern might be more pointed. But, again, I will say again my mantra which is, "We like to think whatever role the Federal Government plays in this area of consumer protection, it is one that"——

Mr. PICKERING. Would be in partnership with the States?

Ms. BURNS. Exactly.

Mr. PICKERING. Mr. Michaels, do you have anything to add as far as privacy or disclosure from a Federal level?

Mr. MICHAELS. I think as long as information on the web is regulated in a way that consumers won't avoid using the web, that is the primary concern I have.

Mr. PICKERING. Mr. Casper, I would like to follow up on a question that Mr. Dingell started. As you know, as we have a whole range of proposals before the committee—from a date certain mandate, to competition, to removal of barrier incentive approach, to the administration's proposal of an opt-out from competition. In your view, if you had a bill that would remove barriers, establish reliability standards, transmission standards, clarify the total power act on the States' authority to move to the retail wheeling if they so choose, would that not bring market pressure to those States, such as Florida, that to date have not chosen to go to competition? But as Texas moves, as Arkansas moves, as Oklahoma moves, as Virginia moves, as other States move, would there not be also market incentives without a mandate for the States to begin responding to competition in other regions and within their own region, without a mandate? What is your view of that?

Mr. CASPER. No doubt that, as other States move, the pressure mounts on Florida. It is just, as of today, there has been nothing done, and the barriers that are put up by the utilities in Florida are significant.

Mr. PICKERING. Would you support Federal legislation that established those things and gave incentives and removed barriers to competition, but did not have a mandate? As preferable to no Federal legislation?

Mr. CASPER. I would support a bill that is as strong as possible and——

Mr. BARTON. The gentleman's time has expired.

Mr. PICKERING. Yes, thank you. Mr. Michaels, I didn't get around to your audit. I apologize.

Mr. BARTON. He actually showed part of the audit capability.

Mr. PICKERING. Did he? Okay, another error on my part today, Mr. Chairman.

Mr. BARTON. No, no.

You are just getting them out of your system.

We will have additional questions for the witnesses for the record, and we would hope that you would try to reply in a timely fashion.

We will not be in session next week, so we won't have a hearing next week. But the following week we will have a hearing on competition and innovation. And then the following week we hope to have a hearing on the administration bill. And then the following week after that, I am sure that there may be another hearing where we bring together a number of issues, including what has happened in the States in the last several months. If Texas does pass the bill—and we think they will this week or next week—we may have some witnesses on that piece of legislation.

I want to thank the witnesses, and this hearing is adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

STATE AND LOCAL ISSUES

THURSDAY, JULY 1, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON ENERGY AND POWER,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Joe Barton (chairman) presiding.

Members present: Representatives Barton, Stearns, Largent, Burr, Whitfield, Norwood, Rogan, Shimkus, Shadegg, Pickering, Bryant, Bliley (ex officio), Hall, Sawyer, Pallone, Rush, and Wynn.

Staff present: Cathy Van Way, majority counsel; Joe Kelliher, majority counsel; and Sue Sheridan, minority counsel.

Mr. BARTON. The subcommittee will come to order. We want to welcome everyone to our continuing series of hearings on the state of electricity industry in the United States. Today our hearing is going to be on electricity competition and how the States and local governments are handling that particular issue.

And it is a really special privilege for me later in the hearing, to introduce two great State legislators from the State of Texas who worked together in a bipartisan fashion to pass a very comprehensive State deregulation bill in Ralph Hall's home State; which also happens to be my home State.

This should be our next-to-the-last hearing on this subject because I hope very soon to be working with Congressman Hall and Congressman Bliley and all other members of the subcommittee to fashion a bipartisan, comprehensive Federal restructuring bill.

It is appropriate that our hearing today is on what the State and local governments have done. I think everyone understands that earlier this week Chairman Bliley made an important statement regarding the irreversible trend of retail competition at the State and local level. And he said that the need for a cattle prod such as a federally mandated, date certain for States to act is no longer necessary.

I am pleased to join him in that assessment and in setting the schedule to move a comprehensive bill out of the subcommittee. We plan to move forward together in a bipartisan fashion. We want to finish the job that we started back in 1992 in this subcommittee where we did wholesale competition at the Federal level.

I am hopeful that our action will encourage the States that have not acted to begin to act very soon. While our methods may be changing in the light of the fact that 23 States have moved to competition, our goal of lowering electricity prices, improving customer

service and spurring innovation by ensuring vigorous retail and wholesale competition in the electricity markets is the same as it always has been.

It is especially important to note that even though Chairman Bliley stated earlier this week that we are not going to insist upon a cattle prod of a date certain Federal mandate, we still are going to push for consumers, including residential ratepayers, to have real choice at the retail level.

And as we move closer to enacting a comprehensive restructuring bill there still are some important questions to be answered. What should the role of Federal Government be in fostering reliable and competitive, retail and wholesale electricity markets? How do we assure that the competition that we hope will result is vigorous and also fair?

With our second panel of municipal and cooperatively owned utilities, we are going to be asking what their role should be in a competitive electricity market. In that vein, I am going to be very interested to hear specifics from today's witnesses.

I would like, as I said at the beginning, to particularly welcome State Senator David Sibley, a Republican, a good friend of mine from Waco, Texas, my home town where my mother is his constituent. And our good friend, State Representative Steve Wolens from Dallas, Texas. He is a Democrat and he passed his version of the bill, 144 to 4.

I have seen resolutions honoring Davy Crockett not pass the Texas legislature 144 to 4. That is a tremendous accomplishment. Both of these gentlemen are to be commended for their dedication to this issue and their willingness to listen to all sides. I am told that all of the interest groups and stakeholders in Texas supported the bill on final passage, and that is a tremendous accomplishment.

I hope that they will tell this subcommittee about how they worked that political magic and how they can help us to garner such overwhelming bipartisan support when we move to mark-up.

Now is the time to take this issue from the positions that many have held for a number of years and move into the real world of what is going on today in the marketplace. We hope that this hearing will shed some light on those issues.

We hope that we can begin to move forward in a bipartisan fashion. And I want to echo the words of Chairman Bliley who said that he wants our friends on both sides to work with us on this effort.

I would now like to welcome the ranking Democrat, the great friend from Rockwall, Texas, Ralph Hall, for an opening statement.

Mr. HALL. Mr. Chairman, I thank you very much and I subscribe to everything you have said. And I again want to repeat my perennial expression of gratitude to you for the way you handle this issue and for the cooperation you have reached across to us over here and we are grateful for it. It is the way to do it.

And we do have two fine gentlemen from Texas here, and my friend from New Jersey over here just a moment ago was interested in your use of the term "cattle prod". I don't know. I am sure they have a similar tool in New Jersey.

But there is another bit of western lore that we might pull into this and after the two that passed the bill in Texas the way they

did and the hard work this group has done, we might give this Congress some advice that is given on the range almost every day in Texas: Don't ever try to rope a yearling when he is running downhill.

And this bill is running downhill. Now, we have got some momentum on it. We are working together, something good is going to happen unless somebody tries to rope him. If they do, I think they are probably going to get hurt.

Mr. Chairman, I thank you for holding this hearing and I am looking forward—Jim Sullivan also. I want to express my appreciation to Jim because you know, we don't just talk to people from Texas. We prefer to. We very rarely ever go north of the line but we go east.

And Jim is a fine member. A former chairman of NAERC; outstanding and knowledgeable, and has more than one time given his services to this committee, to this Congress. And we thank him for that.

I extend a special welcome to these two Texas legislators. As you said, they steered restructuring legislation through their respective bodies. And they weren't really together to start with. I gathered some difference, a great deal of difference in their approach to it.

And I kept getting reports that it was a 50/50 chance as to whether or not we were going to get a bill. I am referring of course, to Senator Sibley of Waco who is just north and east of me, and Steve Wolens of Dallas who is almost in my district—the job they did.

They think alike, I guess basically in being successful and skilled and caring legislators, but they had their own ideas about this. They worked them out and they worked hard at it and they worked day and night. And despite the fact that we kept getting reports it is a 50/50 chance of getting a bill, you can imagine how the chairman who is running this committee and the ranking Democrat who opens gates for him, would have felt if we hadn't gotten a bill.

We would have been in terrible shape to try and lead the rest of this committee into writing a bill that Jeremy Bentham called the greatest good for the greatest number. And that is what we have to do.

So I just hope my colleagues will listen carefully to Senator Sibley and Representative Wolens and to these other men who are giving their time. And I know it takes time to travel here, it takes time to prepare for being here, it will take time to leave here. So you all are givers and not takers, and we are very grateful for that.

I expect we can learn an awful lot from their experiences and Mr. Chairman, I yield back the balance of my time, and again I thank you.

Mr. BARTON. I thank the gentleman from Rockwall and I know Senator Sibley is surprised to know that last night the ghost of Sam Rayburn moved Waco north of Rockwall. I guess things do happen in the dead of night. It used to be south of Rockwall.

The chairman would now like to recognize the full committee chairman, the Honorable Tom Bliley, for an opening statement.

Chairman BLILEY. Thank you, Mr. Chairman, and I certainly want to commend you for holding this hearing on State and local

issues in your efforts to bring about a fully open and competitive electricity power market.

I began championing a competitive electricity market over 10 years ago. In 1992 as the chairman of the subcommittee pointed out, with great effort on his part and the part of many, we took the first step in bringing competition to the wholesale market. Since 1994 I have work to spur the movement to retail competition and today I am pleased to report that some 163 million Americans in 23 States will soon be seeing the power of choice.

This is a tremendous victory considering that 6 months ago to this day, only 13 States had opened their electricity power markets to competition. I commend the States that have taken this important step. However, the work is not yet complete. I encourage the remaining States to open their electricity power markets to competition and accord their citizens the power of choice.

Meanwhile, we here in Congress need to finish our job. There are Federal issues that must be addressed if we are to bring about a fully open, and competitive electricity power market that benefits all Americans. In order to do our part we must pass a comprehensive, electric power bill that is good for all consumers, improves reliability, and ensures open and robust competition.

Let me reiterate what I said Tuesday. We have a duty to give consumers access to more choices and lower prices. To deny them this would be wrong. So I urge all members to honestly join in this effort. It is important to consumers and it is important to our economy as we move toward the new millennium. I am hopeful that we can accomplish this great challenge together.

Now is the time for everyone to come to the table prepared to work. I have instructed my staff to work very closely with Chairman Barton's staff to develop legislation that will finish the job. I extend an open invitation to all members, Republicans and Democrats, to participate in enacting a comprehensive electricity restructuring bill.

As we develop that bill we must never lose sight that the consumer is front and center. Thank you, Mr. Chairman. I look forward to hearing the testimony of our distinguished witnesses today, and yield back the balance of my time.

Mr. BARTON. Thank you, Chairman Bliley. Before we recognize Mr. Pallone, Congressman Hall and I were talking privately that many of you probably don't know what the phrase "yearling running downhill" means. Once a calf grows up it becomes a yearling and it leaves its mother and the spring after that happens you have the roundup.

And basically what that means is, if the yearling, the young cow is running downhill back to the pasture or the corral, you don't want to do any work to keep him from doing him what you want him to do anyway. So for those of you that didn't grow up on a ranch Congressman Hall wanted you to know what that phrase meant.

Mr. HALL. I had always wondered what it was. I had used it a lot of times.

Mr. BARTON. We now recognize the gentleman from New Jersey for an opening statement. Mr. Pallone.

Mr. PALLONE. I know what a yearling is. There was a novel or something about a yearling. Thank you, Mr. Chairman.

I wanted to say that I am particularly interested in hearing the testimony from today's witnesses since my home State of New Jersey recently enacted legislation that would deregulate the electric market on a very aggressive schedule.

All New Jersey residents will be able to chose their electricity suppliers by August 1 of this year, and individual States clearly have the right and responsibility to establish their own game plans for introducing energy competition as we continue the restructuring debate here in Congress. We must of course make sure that we do not undo the progress that States like my own State have made.

I would like to hear from States that believe they need our help as to what kind of assistance they would need from the Federal Government, and I would also hope our witnesses would provide their perspective on the effectiveness of mandating price cuts and whether the anticipated benefits outweigh associated costs.

Further, hopefully the witnesses will inform us as to whether they believe Congress could remove or eliminate what some claim to be significant, Federal statutory barriers to a more competitive electric industry without pre-empting State authority over those areas traditionally falling within the State's jurisdiction.

And since I might not be able to stay for the question period I would also like to ask up-front whether States have the authority to ensure the continued reliability of the intrastate electrical system and protect the interests and priorities of native or local load customers.

Again, Mr. Chairman, I want to thank you for having the hearing on this issue today because I think that this issue with regard to the States is particularly important. Thank you.

Mr. BARTON. Thank you, Congressman Pallone. We would recognize the gentlemen from Kentucky, Mr. Whitfield, for an opening statement.

Mr. WHITFIELD. Mr. Chairman, I am delighted we are having this hearing today and particularly focusing on State and local issues and the way that groups in Texas and Michigan and other parts of the country have dealt with this issue.

We have had a number of hearings on this subject. I think I have said about all I need to say, so I will waive the balance of my time.

Mr. BARTON. Thank you. We would like to recognize the gentleman from Ohio, Mr. Sawyer, for an opening statement.

Mr. SAWYER. Thank you, Mr. Chairman. All this discussion of colloquialisms in Texas reminds me that in Ohio one of the great linguistic dividing lines is the Old Lincoln Highway. And above it there is one collection of colloquialisms and below it there is another.

I discovered that when you live north of that line, particularly in an urban setting, that the word "service" has a very different meaning from when you live below that line and in an agricultural setting. And I was talking with one of my colleagues in the Ohio legislature. He said, what did you do over the weekend? I said, I have been at home doing constituent service. He said, son, I have been looking at your voting record and I do believe you may be right.

Language is important and the work of the States has been critical. Texas I think, can be particularly instructive because it does represent such a very large market; virtually a region in its own right. But because of that it also creates some unique circumstances.

Distinguishing among those and understanding the importance of flexibility it seems to me, is particularly important. As you know, I have paid a lot of attention to transmission issues in all of this, and Texas I think, because it is so large, has a great deal to teach us but it may not represent all of the solutions.

I have four basic questions I hope we can explore today. The question of whether or not there is sufficient transmission capacity across the country to create a genuinely competitive environment and whether the legislation that we are contemplating will provide for sufficient capacity to invest and grow, and the flexibility to do that as the transmission needs of much larger markets begin to evolve.

That question of flexibility of framework I think is extremely important, not only for the changing nature of interstate regional markets, but particularly for the hard-to-reach within particularly isolated pockets in the country in electrical terms. As we look at this the third question is, what role the FERC should have, both with regard to transmission and siting problems in particular.

And finally, the valuation of both existing and new transmission facilities I think, plays into all of this as we make sure that there is sufficient attractiveness to provide for investment in new transmission entities.

I hope that we can touch on all of those today, and I thank you, Mr. Chairman, and our ranking member for calling this particular hearing. I think in conclusion once again, we have a great deal to learn from it. Thank you.

Mr. BARTON. Thank you, Congressman. I am going to look up colloquial whatever it is, and see what that means when I have a chance.

We have got a journal vote on. We are going to try to continue so that we don't have to have an interruption. And so I have sent a runner and hopefully we can continue the hearing. We would now like to recognize the Congressman from Tennessee, Mr. Bryant, for an opening statement.

Mr. BRYANT. Thank you, Mr. Chairman. I do want to thank you also for calling this particular meeting and the series of meetings that we have had.

I certainly think with the first panel including, I think, 40 percent Texans, it has to be a very valuable panel and I look forward to hearing from Texas, as well as others in the second panel from Paragould, Arkansas, all the way to New York City. So we have a wide variety I think today, of presentations.

As I said before, I think we can all learn much from this valuable experience that some of these States have had. And with that in mind, I simply yield back my time and commend the process.

Mr. BARTON. Thank the gentleman from Tennessee, and we recognize the gentleman from Oklahoma, Mr. Largent, who was the winning baseball pitcher from last week. I think gave up one run

and what, five hits, in seven innings? And for the third year in a row or fourth year in a row, was the winning pitcher?

Mr. LARGENT. Third.

Mr. BARTON. Third year in a row. And he used to be a football player for the Seattle Seahawks but we don't worry about that anymore. So we recognize the gentleman who has done outstanding work on this issue, for an opening statement.

Mr. LARGENT. Thank you, Mr. Chairman. I don't have an opening statement. I just wanted to hear your introduction. Seriously, this should be a fascinating hearing. This is probably one of the most confusing issues I think, in electricity deregulation for most members.

And so to hear from the public power folks about issues on private use and new bond issuance and different issues like that, will be very important; open transmission. And so I look forward to the testimony of our panels.

Mr. BARTON. Thank the gentleman. We now recognize the gentleman from Arizona, Mr. Shadegg, for an opening statement.

Mr. SHADEGG. I thank the chairman and I commend him for scheduling this hearing. Given that the composition of the first consists of, as has been noted, almost all Texans, I find it rather interesting that instead of sending the normal invitation to this hearing you and Mr. Hall sent me a subpoena.

Mr. BARTON. You are lucky to get that, Mr. Shadegg.

Mr. SHADEGG. Other than to note that Arizona is facing many of the problems that we will hear about today, and that Arizona has moved forward with its own legislation, and that the Arizona legislation I think, differs from some degree from the Texas approach in that the legislation in Arizona forced all utilities, including public power, to open their territory to retail competition, creating some unique circumstances in Arizona, I am very much looking forward to this hearing.

And in the spirit of the July 4 holiday and our Nation's birthday, I am going to spare you the balance of my opening statement and simply ask permission to insert it in the record.

Mr. BARTON. Point out for the record that March 2 is Texas' Independence Day, which Senator Sibley and Representative Wolens know.

Does Mr. Burr wish to give an opening statement?

Mr. BURR. Only to say Mr. Chairman, we have been challenged to try figure out the high concentration of Texans who have testified on electricity.

We have come to the conclusion that this is an effort by the Chair and the ranking member to have a way to gauge whether the census count in the year 2002 in fact is accurate, by making sure that we have had every Texan through the committee to in fact, testify.

Mr. BARTON. The statement is supposed to be relevant to the subject at hand, Mr. Burr.

Mr. BURR. Let me take this opportunity today to thank you for allowing North Carolina to participate at last, in the debate on electricity, and to welcome the Honorable Preston Bass who is here to testify, and others of his colleagues from towns in North Carolina who are here to share their firsthand experiences.

I think that it has always been the intent of this chairman and this ranking member to make sure that this process includes the voices of all, not just Texas; even though we do take the opportunity to highlight the heavy-weighted nature of the Chair's choice of witnesses, and we welcome those Texans.

But to also say in all honesty, that this is a process that up till this point has included everybody. This is a process that I am convinced as we go through to final legislation, will continue to include everybody, and hopefully will meet the test of the best policy the Congress can produce relative to electricity deregulation.

I thank the Chair and I thank the ranking member for their leadership and their guidance through this. I yield back.

Mr. BARTON. I see no other members present that wish to give opening statements. All members not present who wish to have an opening statement put in the record will do so without objection at this point in the hearing record.

Normally, we would go ahead and bring the first panel but because there is nobody here but me we are going to have a very short recess to go vote and we should reconvene within the next 10 minutes. So all our witnesses, we would encourage you to stay in the room, in our audience. I am going to run, vote and we should reconvene I would say, at about a 10:45.

So we are in recess for approximately 12 minutes.

[Brief recess.]

Mr. BARTON. The subcommittee will come back to order. We appreciate the indulgence when we had to do the short recess.

We want to call our first panel forward. We have the Honorable David Sibley from the Texas State Senate, from Waco, Texas; we have the Honorable Steve Wolens from the Texas House of Representatives in Dallas, Texas; we have the Honorable Jim Sullivan who is President of the Alabama Public Service Commission, Montgomery, Alabama; we have the Honorable David Svanda?

Mr. SVANDA. Perfect.

Mr. BARTON. Svanda, who is the Commissioner for the Michigan Public Service Commission. And last, but certainly not least, the Honorable William Nugent who is Commissioner for the Maine Public Utility Commission, Augusta, Maine.

Gentlemen, I want to welcome each of you to the subcommittee. We have your statements, which I might say were on time. We ought to send a notice of that to the Department of Energy that it is possible to get testimony on time to the committee, and we will put them into the record in their entirety.

We are going to go right down from my left, your right. We are going to give each of you 7 minutes. There is a little light that will turn on and when it turns red you are supposed to stop, but we will give you a little extra time to complete your sentence and your train of thought.

So we will start with Senator Sibley. And again Senator, the subcommittee can't tell you how pleased we are that you and Representative Wolens were able to put together the bipartisan bill in the Texas legislature. And it is my understanding the Governor has signed it.

That is a tremendous accomplishment for our State and gives us tremendous momentum for the country. So we welcome you to sub-

committee and will recognize you for 7 minutes to elaborate on your written testimony.

STATEMENTS OF HON. DAVID SIBLEY, TEXAS STATE SENATE; HON. STEPHEN D. WOLENS, HOUSE OF REPRESENTATIVES, STATE OF TEXAS; HON. JIM SULLIVAN, PRESIDENT, ALABAMA PUBLIC SERVICE COMMISSION; HON. DAVID A. SVANDA, COMMISSIONER, MICHIGAN PUBLIC HEALTH SERVICE COMMISSION; AND HON. WILLIAM M. NUGENT, COMMISSIONER, MAINE PUBLIC UTILITIES COMMISSION

Mr. SIBLEY. Thank you, Chairman Barton, Mr. Hall, and members. It is an honor for me to be here with you.

Mr. BARTON. Dave, you need to really put that microphone up close to you.

Mr. SIBLEY. Thank you. It is especially an honor to be here with Chairman Steve Wolens. We did enjoy a good working relationship and that is what I would wish for you and everybody as you try to put this together.

One of the things I think that we did right was, we set goals. I guess the expression, not to get too Texan about this, but if you don't know where you want to go, how will you know when you get there?

And so we came up with several goals, and some of the goals that we had were lower prices for residential consumers. And I would commend that to you. If the only choice a residential consumer has is higher price you are going to lose. That will not be something you want to do.

The second was to set up a long-term, competitive market. We didn't take the short view; I think we took the long view. I think we were less concerned with what happens in the next 2 years or 3 years as opposed to what we will look like in 5 or 6 years down the way.

And the third thing was to be fair to the stakeholders. I assured all of the stakeholders early on in this I didn't want to see anybody get hurt or killed. We didn't want people going broke, we didn't want to see people who are in the market now unable to be in the market after we set this up. So we tried to come up with something along those lines.

The other colloquialism I will use, and this will be the last one, 2 years ago in the Texas legislature when I was Chairman of the committee that was overseeing this, I was not in favor of the idea. My question at that time was, what is broke? You know, if it ain't broke don't fix it.

And so we had a system that had served the people of Texas relatively well for a long period of time. We are a low-cost State. We don't have extraordinarily high electric costs. But what I found out after looking at this for 18 months is that the system is broke. And what is broken is that consumers bear the risk of loss.

In Texas, under rate of return regulation what we found was that no matter how the investment that the utility made was, they were still guaranteed a rate of return on that capital no matter how poorly it was spent, and that rate of return would be 10 or 11 or 12 percent.

And I think that is not a good system. That is not, in economics, an efficient market. And so what we tried to do with our bill, and I would say this is a fourth goal, was to shift the burden of risk over to the companies so the risk of loss would now be borne by companies who made bad investments rather than rate payers who guarantee companies a rate of return.

I would like to talk just briefly about the Texas legislation, and that is the joke in the Texas legislature is, the biggest lie in the Senate is, I will be brief. But in this case because of that light, I really will be brief.

The Texas legislation had broad support. The first time it passed through the Senate, 91 percent of the Senators were in favor of it. As it passed through the House I believe it was 97 or 98 percent. When it came back to the Senate for concurrence it was 100 percent. So we had a bill that I believe had a broad base of support.

Utilities, the co-ops, the municipal systems, environmentalists, large industrial users, and even consumers ended up supporting the bill. So I think it was something that we are very proud of.

I would like to talk about one of the simple features of the bill. Through the courtesy of Representative Wolens you have a chart in front of you that I will refer to. One of the central features was what we call the "Price to Beat" mechanism, and this would be a representation of that.

Starting, in fact right now, we freeze utility rates until the advent of competition which happens January 1, 2002. We could be lowering prices, because we are in a diminishing cost business right now, but we linked the lowering of prices to the stranded costs, and so we are paying off stranded costs.

If you will see that green differential there, you have a gold-colored line. That would be what we project would be the diminishing costs. And we freeze that up there at that higher level; the purple line. And the whole differential goes to pay off stranded costs.

When we start competition in 2002 in the State of Texas, we think we will have less than $3 billion of stranded costs, which I think is a very manageable thing.

On day one of competition we mandate a cost reduction of 6 percent and then we freeze companies at that rate. The "price to beat" mechanism is the lower, or the 6 percent reduction, and we hold them steady until certain conditions are met.

Now, the "price to beat" mechanism applies to an incumbent utility. So in their service area the incumbent utility is frozen at a minus 6 percent of what they are today. They are not allowed to deviate from that. This is not a particularly popular thing with them. They would like to compete and try to hold onto all their customers.

Taking the long-term view we felt that this gave enough headroom for competitors to come in and be able to compete and take customers away from the incumbent utility. The incumbent utility though, can go outside their service area and can compete at any price they wish. And so this gets them out of their service area and it allows others to come into their service area.

We require utilities to break themselves up into three entities: a generation company, a wires company, and then a retail electric provider. The wires company remains regulated under what we call

performance-based regulation, where the better the service is the more they recover. So that remains regulated.

We have market power tests. We basically have two I would like to call to your attention. One is the generation market power test wherein our electric grid, which is ERCOT, Electric Reliability Council of Texas, no entity is allowed to have more than 20 percent of the generating capacity within that area.

The second market power test is more in the retail market and that is the 40 percent number. We require the utilities, the incumbent utility, to lose 40 percent of its market in a certain segment of the market, before they are allowed to get out from under the "price to beat" mechanism. So they are frozen until they lost 40 percent of the market.

Stranded costs is a tough issue. I think intellectually for me it was easy to deal with. I believe there is a regulatory compact. I believe that utilities gave up their right to charge whatever the market could bear in exchange for being able to have a monopoly.

And they also said that whatever prices we are going to be charged would be approved by the PUC. And then to change all the rules I do think, puts them at a disadvantage. So the threshold question I think for you, is should they recover stranded costs? If the answer is yes then you are talking about allocation; who should pay. And that was an issue that Representative Wolens dealt with I think, in a very good way.

If you do allow them to recover stranded costs, I implore you to have a true-up after the advent of competition. We chose 2 years, so 2 years after competition we will look back and see how our allocations and how the stranded costs came out, and then we will either pay them more or they will pay us.

Governor Bush insisted on linking environmental clean-up to payment of stranded costs and I think that worked very well for us, and I will be glad to answer any other questions.

Let me conclude by saying I do think there is a role for the Federal Government in this, and that is the role of the referee. I think you ought to be able to help us set individual system operators to help us make sure all the reliability of the grids are there.

PURPA needs to be brought into the 21st Century. You could help us in Texas if you would allow public power corporations in their taxes and bond status. That is a big issue in Texas. I was going to answer some of the questions Mr. Sawyer raised but the red light is on, but I will be glad to answer those as they come up. And I won't refer to any jokes about servicing.

[The prepared statement of Hon. David Sibley follows:]

PREPARED STATEMENT OF HON. DAVID SIBLEY, DISTRICT 22, TEXAS SENATE

Introduction

Good Morning. My name is David Sibley, and as a Texas state senator, I authored the recently passed electric restructuring legislation in our state. Mr. Chairman and members of the subcommittee, I thank you for giving me the opportunity to testify today on the importance of state and local issues in electric restructuring.

I would like to start by giving a brief overview of the Texas bill, and finish by discussing federal restructuring efforts.

The Texas bill, which was signed into law by Governor Bush just two weeks ago, was the result of years of comprehensive study by key Texas leaders. A delegation comprised of Texas House and Senate members, representatives of the offices of Governor, Lieutenant Governor and Speaker of the House, and members of the

Texas Public Utility Commission visited California, Pennsylvania and England to learn about their restructuring efforts. I can honestly say our bill used some of their good ideas, threw out bad ones and took some bold new steps in our effort to create a long-lasting competitive market in Texas.

When we started this process, I was skeptical about the benefits of restructuring for residential customers. My question to the advocates was: What's broke? Texas has, by most measures, some of the lowest rates in the country, and the competitive wholesale market we implemented in 1995 has been bringing them down even further. I knew that through regulation and the status quo our residential customers would continue to be well served. What was broken was the customer bearing the risk of loss, not the companies. Under rate of return regulation, companies are guaranteed a ten percent return on investment no matter how unwise. The costs are passed through to the ratepayers. A free market would reward good investments and punish bad ones.

After intensive study I came to the conclusion that residential customers can get lower rates and better service from a truly competitive electric market. The rub is: *how do you structure a market lucrative enough to attract new entrants for the long term, while at the same time paying off stranded costs, letting existing utilities compete fairly without being punitive to them, and all the while ensuring lower rates and continued reliability for customers?*

I believe the Texas legislation does all of these things. It was supported by the utilities, electric cooperatives, public power agencies, power marketers, environmental groups, and industrial and commercial customers. While most consumer groups would not endorse the bill, they readily admit it is the best bill in the country for residential customers.

Texas Legislation

The Texas bill recognizes the unique circumstances of electric cooperatives and municipal utilities by allowing them to opt into competition at their own pace. They are not required to opt in by a date certain, but we believe that the new market structure will encourage most public utilities to voluntarily open their markets.

After we made the decision to allow the coops and munis to compete at their own pace, the most difficult challenge we faced was designing a market structure that is conducive to competition without being punitive to existing utilities. Our market structure carefully balanced the unbundling of existing utilities, a rate design to foster competition while providing rate cuts, payment of stranded costs, market power restrictions to protect new competitors and customers, strenuous customer protections, environmental protections and the enhanced reliability of our grid.

Unbundling: The Texas bill requires separation of existing utilities into three companies: a transmission/distribution company that will continue to be regulated (wires company or Wireco), a power generation company that can only sell to the wholesale generation market (Genco), and a retail electric company that markets to retail customers but cannot own or operate generation facilities (retail electric provider or REP). These formerly integrated companies will operate as affiliates under a strong code of conduct included in the bill to ensure independence. Our legislation requires open access to the transmission and distribution systems and nondiscriminatory rates for those services.

Rate Design: Beginning on the market opening date, January 1, 2002, all existing customers are automatically transferred to the existing utilities' retail electric provider affiliate. We did this because we found that a lottery system of assignment would be perceived as state-mandated slamming. However, if we let existing companies keep their customers we had to make sure they couldn't force their prices down to keep competitors out of the market. We also had to make sure they didn't receive windfall profits from keeping those customers. At the same time, we wanted to provide an immediate benefit to customers through a rate reduction.

We came up with what we call the "Price To Beat." On Day One, January 1, 2002, residential and small commercial customers will automatically receive a 6 percent rate reduction from the new utility affiliate. This new rate is the "price to beat", which includes transmission/distribution service and energy charges (distribution/transmission is billed through whichever REP is providing the energy service so that a customer receives only one bill). A customer can shop around and get a lower price from a competitor. The incumbent utility REP cannot charge a price lower or higher than the "price to beat" within the residential and small commercial markets for a period of three years or until it has lost 40 percent of its load within each respective market. And, once the incumbent utility REP has met one of those thresholds, it cannot charge a price higher than the "price to beat" through the fifth year after competition starts. While the incumbent utility REP cannot lower prices in

their former service area, they may compete at any price outside of their former service area.

The purpose of the "price to beat" mechanism is to provide enough headroom for profit so that new entrants will have an incentive to market to residential and small commercial customers. The 40 percent threshold ensures that incumbent utility REP's are not subject to this price freeze once the market is competitive. And, the price cap for years 3 through 5 ensures that customers will not see a price increase once the utilities begin to compete on price.

A lot of thought went into the "Price To Beat" concept. We had to ensure that the rate reduction was not so large that a competitor wouldn't want to serve customers. In fact, we were under constant pressure throughout our legislative session to make much deeper rate cuts, which we could have done since we were working off of 1999 rates in a declining-cost business. However, doing so would have compromised our ability to create a competitive market. We don't want to deregulate monopolies. Also, the utilities lobbied hard to allow their utility affiliates to compete on price. Our bill allows a utility REP affiliate to freely compete outside of its affiliated distribution company's service territory, but places the "price to beat" restrictions on the affiliated REP within the existing service area. We felt like it would be extremely difficult for new players to compete without these restrictions, though, for example, we wanted the TXU Electric REP competing in the Reliant Energy (formerly HL&P) service area without restrictions, and vice versa.

Stranded Costs: The fight in Texas wasn't about whether we should pay for stranded costs. There was consensus early on that the utilities should receive some compensation for their potential losses. I do believe there is a regulatory compact, i.e. utilities gave up their right to charge whatever the market will bear and agreed to charge only what a state agency said they could in exchange for the exclusive right to serve an area with electricity. Government at all levels then dictated what energy sources would be permitted for the generation of electricity and where the plants would be sited. For example, in the '70s Washington decided that we were running out of natural gas and pushed utilities into nuclear. In retrospect, this was not a good decision. I believe utilities are entitled to some compensation as we transition into a competitive market. The difficult issue is determining how much should be paid, how utilities would be paid and who would pay them.

Our two biggest concerns were that customers would pay too much, and that real competition would be delayed or stunted due to large nonbypassable charges (the California problem). Beginning this September, we are freezing existing rates for the transition period to competition so that any over earnings can go towards stranded cost recovery. This will minimize the amount we have to pay under competition. To make sure customers and utilities are treated fairly, our legislation requires market valuation methods in all cases except for nuclear assets. It allows utilities to securitize stranded costs early based on an administrative model established by our PUC. A final true-up in 2004, two years after competition, would consider how much, if any, utilities had over earned during the transition period and during the first two years of competition under the "Price To Beat."

Stranded costs are recovered through nonbypassable charges on distribution and transmission services, which are included in the delivery portion of the REP bill. The PUC has the authority to adjust these charges to ensure that they are not too high. Since the "price to beat" is based on the full price of electricity, including delivery, production and fuel, a large nonbypassable charge would have the effect of reducing the "headroom" or profit margin in the generation-related part of the price. This would make it more difficult for competitors to make a profit, and therefore discourage their entry into the market. The consideration of stranded cost recovery and its effect on rate design is a crucial component of restructuring that cannot be overlooked.

Market Power: Texas broke new ground in addressing market power. As you may know, the Electric Reliability Council of Texas (ERCOT) is a wholly contained interconnection grid within Texas. There are no interstate interconnections within this grid. This has its advantages and disadvantages for us in considering legislation. A disadvantage is that the existing market concentrations within our state are relatively high, without the option of bringing in power from other grids. We addressed this issue head-on by prohibiting the ownership of more than 20 percent of the installed generation capacity within a power region (Texas is also in the SPP, SERC & WSCC). We do not require divestiture but instead allow the auctioning of rights to capacity. The utilities were initially opposed to the capacity limitations within the bill, but have come to embrace it as part of a larger package that is fair to the industry.

Another market power provision we included is a requirement that utilities sell 15 percent of their Texas jurisdictional capacity through auctions to ensure there

is enough available capacity for competitors to resell. This is required for five years or until 40 percent of the residential and small commercial market is served by competitors. Other market protections include a strong affiliate code of conduct to prevent cross-subsidization and the preferential treatment of generation and retail affiliates by the transmission/distribution company (Wireco).

Customer Provisions: Our customer protections are very strong due to our experiences in the deregulated telecommunications market and England's experiences in the restructuring of their gas markets. A stand-alone customer protection bill was passed to address the telecommunications and electric industries, especially since we believe these industries will begin to merge and package services together. In addition to slamming and cramming protections, our law prohibits disconnections for nonpayment during extreme weather and gives the PUC the authority to promulgate marketing rules and guidelines. A system benefit charge on wire charges funds a customer education program to facilitate shopping, a low-income program for families at or below 125 percent of the poverty level and a school-property tax replacement program to protect our school finance system.

Environmental Protections: Governor Bush provided strong leadership in the area of environmental reforms. The legislation establishes an emissions cap for grand fathered units and requires statewide 50 percent NO_X emission reductions and 25 percent SO_2 reductions by May 1, 2003. The costs of retrofitting certain older generation assets are allowed to be recouped as stranded costs to incentivize companies to retrofit to the highest technology available, and a renewable energy trading credit program was established to help the industry meet renewable energy goals. The bill also includes some energy efficiency requirements.

Reliability: Finally, the anchor of our legislation lies in the improvement of our existing independent system operator (ISO) and the implementation of strong reliability standards. The ISO will be responsible for the physical and financial transactions within ERCOT. In addition, our PUC has been given the authority to revoke the certification or registration of any market participants that do not abide by the ISO rules. The ISO is governed by an 18-member board comprised of representatives from all of the market sectors, including residential, commercial and industrial customers.

State and Local issues in Electric Utility Restructuring

I believe the Texas legislation is a far-reaching comprehensive bill that will create a robust competitive environment. However, what works in Texas may not work in California or in Kentucky. And, retail competition may not benefit every state. I encourage this subcommittee to defer to each state in their decision of whether to allow retail competition. I believe most states will choose competition because it is more efficient and beneficial for all consumers.

I do encourage you to pass a federal restructuring bill that recognizes the differences among states and market sectors. The grand fathering of existing plans will preserve the delicate compromises made by many parties, and will ensure a smoother implementation of our restructuring plans. Preemption will only create a legal quagmire that will slow down the establishment of competitive markets.

There is clearly room for federal intervention and assistance. Outdated federal regulations, such as the mandated purchase requirements within PURPA, should be abolished. FERC should be given the necessary tools to ensure that strict reliability standards are implemented and to assist states and regional councils in assuring nondiscriminatory access to transmission systems. FERC should play the role of referee in the oversight and formation of regional transmission systems. Frankly, we can't implement our restructuring legislation in the non-ERCOT parts of Texas without FERC's help.

Another extremely important role for Congress is to ease private use restrictions on outstanding tax-exempt bonds so the customers of public utilities are able to participate in retail competition. Competition in the service areas of public utilities cannot occur without open transmission access, which is discouraged by the possibility of retroactively taxable bonds if the private use issue is not clarified. Texas has many great municipal utilities that are eager to compete and will do well.

Another concern I have is the possibility of federal system benefit charges. Deregulation of the telecommunications market at both the state and federal level has brought with it a laundry list of new charges to implement government programs. While these programs are often necessary, we should avoid duplicating programs at the state and federal levels. I'm also concerned that because Texas is a high energy use state, federal system benefit charges may tax Texans more heavily while the benefits may accrue in other areas. I urge you to defer to the states for all of these programs.

Finally, I understand that Texas is different from other states because of its unique grid. I urge you to recognize that our Legislature and PUC have done an excellent job in regulating.

Mr. BARTON. Well, thank you Senator, and again, we will have sufficient time for questions that you can elaborate on some of those points.

We would now like to recognize Representative Wolens. Congressman Hall was going to brag on you but he got some very favorable, personal news just now and he has gone to call his family. So if he were here he would expound on what a great job you did and how you brought the Texas House together which he didn't think was possible. And he just would have gone on and on about you in a much better way than I could. But we are delighted that you are here and we will give your statement in its entirety in the record and let you elaborate for 7 minutes plus a little extra, if you need to. Representative Wolens.

STATEMENT OF HON. STEPHEN D. WOLENS

Mr. WOLENS. Chairman Barton, thank you, members. It is a pleasure for me to be here for a couple of reasons. More than 30 years ago I was a Page in Congress and I used to run errands, and I ran a lot of errands in this room for a lot of folks that told me when to get paper and when to get chewing tobacco and when to do all those kinds of things. So it is nice to be here sitting at a table instead of running back and forth.

Chairman Barton just testified before the committee that I serve on, so Joe Barton, I like the symmetry of what is going on here, and it was maybe 35 years ago I met, what to me, was the biggest politician and the most important politician of my life, who was then State Senator Ralph Hall. And what I would say to Ralph Hall is that some things, at least from my perspective, never really change.

I am really tickled about the vote that David Sibley and I were able to do in the House and in the Senate. It was a whopping vote. We were wondering if we could ever get to 100 much less 142 or 144 votes, and it was miraculous.

And what I also want to tell you is the people who signed off on the bill, and if you look at my handout in around page 5 or 6 or 2 or 3, it will show you that joining hands in this bill were the National Federation of Independent Businesses of Texas and the Texas AFL-CIO.

You had the investor-owned utilities signing off with all of their competitors, which includes PG&E and Enron. So you had the competition on both sides signing off on the bill. You had the investor-owned utilities with all their dirty plants; which they say is not the right word. They call them environmentally challenged plants.

But in any event, you had the IOU's signing off with the Environmental Defense Fund also signing off on the bill. And if you look at the page there are a lot more names of various members of opposing financial interests signing off on the bill. The part of the magic was putting everybody with an antagonistic financial interest in the room to work on the bill.

And you will notice that of the 200 pages that David and I were able to move, it is detail, it is meat. It is not a skeleton bill where

we give it to the PUC and as the PUC you guys go figure it out. We didn't do that on the Code of Conduct. We put in the specific Code of Conduct and it is detailed and it is full of meat and full of flesh for the buzzards to go pick on.

Now, everything in the bill is counter-intuitive; it runs against the grain. What David discussed with the "price to beat" is counter-intuitive. I mean, why in the world would you tell the incumbent utilities, you can't lower prices?

And can you imagine the notion that we go in and say we are going to mandatorily limit and lower the rates by 6 percent, then we turn around say, you are going to freeze your rates there and come back and say no, we want to lower it? I mean, the incumbent utilities were before the legislature begging us to permit them to lower their rates and we said no.

And the reason we said no is because what we have learned in trucking and what you have learned in trucking and what you have learned in airlines which is, if you let the big dog come underneath, lower the price, they are going to run the competition out of business and raise the price.

Now, let me tell you the three reasons that we had no business changing the law in Texas. Reason No. 1 is, we have got some of the lowest rates in the country. Reason No. 2 is because we have got reliable service. And reason No. 3 is, no one asked us to do it.

I have got 125,000 people in my district; he has got a half-a-million people in his district. I don't know about David. I got not a single letter saying, please change the structure. No one did it. So the question is, why did you guys change it? And there are a variety of reasons.

No. 1, even though our rates are low we have got some of the highest bills in the country. The national average is about $800 a year: California is about $700 a year; Texas is about $1000 a year. So our bills are high.

And reason No. 2 is a big deal to us, but it is going to be a big deal to you all and it is, dealing with capacity reserve. We learned in July 1978 that we were going to have a capacity reserve margin at 10 percent or lower in Texas. As you know, the margin of safety is 10 to 15 percent reserve capacity margin.

Well, that was Texas now. There was a report that came out by the North American Electrical Reliability Council; Donaldson, Luvkin, and Generett reported it in their 1999 Financial Report. But it is staggering what they say.

They say by the North American Electrical Reliability Council that 8 of the 11 regions in the country are going to have a shortage of electricity; that it will be less than 10 percent in 1999 in 8 of the 11 regions, of which Texas is one; but they also said for the entire United States by the year 2003 it will be at 7.6 percent, which is of course, less than the 10 percent.

And that is you all's to deal with. I mean, you asked what you should be fretting over? And you should be fretting over that issue because it is coming upon us.

Now, the second reason that there is an adequacy of generation issue, No. 1 is that the increase and rate of demand has not exceeded the growth as we know here. And the second one is that the market is reluctant to invest. And if you look at the less than 10

percent in 1999, DOJ says it is going to cost $30 billion for capacity for the markets to spend to get us back up to 10 percent.

It is $30 billion. And I would suggest that you are not going to find businesses willing to invest in the market unless they know what the rules are. And if you don't know what the rules are, they ain't going to be spending $30 million.

So the first reason is that we have got high bills; the second adequacy of generation, which I believe is an issue for every State and for you all; and the third major reason, and I have got five of them, the third one is a parochial interest which is, mergers and acquisitions.

It is everywhere. They are gobbling each other up, and they are not only doing it nationally but they are doing it internationally. You look to see in Texas, Central and Southwest was bought out by an Ohio company, American Electric Power of Columbus, which is fine. As a Texan I wasn't happy about it, but it is fine.

But I don't know that I want Texas utilities to become necessarily Canada utilities. And it is not a far-off venture. Now look, February 1, 1999 Texas Utilities spends $1 billion in Australia. A day later New England Electric of Massachusetts buys Eastern Utilities for $750 million. It is no big deal. Those are two neighbors, side-by-side.

The big deal is that New England Electric 2 months before, had been purchased by an English company; by National Grid of Coventry England for $3.2 billion. That is a big deal. But if you talk to the chairman of the Board of the English industry, of the English corporation, and his explaining why he bought a New England company he will say, to give him a platform for future acquisition in the United States.

I see the red light, but let me mention just two other things briefly. I can tell you, and you know, from March, April, May and June if you look at today's New York Times there is another big acquisition going on in this business. Fourth reason, there is nothing inherently monopolistic about electricity; not at the generation side, not at the retail side.

T&D, yes, but not at the other two. And if we deregulate something that is not inherently monopolistic, everybody will win. And finally, and this is also terribly important from your point of view, you will and we will unleash an enormous amount of technology and innovation.

In the early 1980's you could get any phone you wanted to as long as it came in black. And look what we do with pagers and look what we do with cell phones. And you are going to see this exactly same thing. Texas Utilities was my electric company. Dallas Power & Light became my gas company 3 years ago; Lone Star Gas.

They just bought a telephone company 2 years ago. Did you know that? If you looked at Forbes in April of this year, Forbes talked about 11 electric companies that are getting into the telephone business.

And you are going to be seeing what you already see with Texas Utilities, which it is going to be electric, it is going to be gas. It is going to be telephones, local and long distance; cellular is going to be bundled in it and when they get through with that they are

going to do a joint venture with someone and it is going to be internet, it is going to be local phone, it is going to be cable.

And attached to that they are going to throw in your fire alarm system and they are going to throw in your smoke alarm system. And it is only be deregulating it.

And thank you for letting me visit with you.

Mr. BARTON. I would like to keep letting you talk but there are some non-Texans here and they have had about all of Texas they want to hear for a while, I think.

It is obvious that you and Senator Sibley made a great team and it is also obvious, or will be once the questions are through, that the bill that you helped pass is, as you put it, full of meat and we appreciate that.

We now want to hear from the Public Utility Service Commissioner from the great State of Alabama. And I know that is a relief to everybody else on the panel that you are not from Texas. And I believe Alabama may have a little bit different perspective about some of these issues than we have just heard. So you are recognized for 7 minutes, Commissioner, and if you need a little extra time you will be given that privilege also.

STATEMENT OF HON. JIM SULLIVAN

Mr. SULLIVAN. Thank you, Mr. Chairman, and I thank the members of the subcommittee. I am Jim Sullivan. I am not from Texas, I am from Alabama, and I am President of the Alabama Public Service Commission. But I can tell you, I have been vitally interested in what my friends to the right of me have been saying about the bill that they recently passed.

I understand that my written statement will be included in the record today, and I appreciate that as well as I appreciate the opportunity to come here and make an appearance as you study State and local issues that are involved in electricity competition.

Coloring any discussion of electric industry restructuring is the fact that Alabama is one of the so-called, low cost States. And my first charge as a Public Utility Commissioner is to ensure that Alabama keeps those rates down while keeping the quality of service and reliability up.

Based on recent published information, Alabama has electricity rates that are 17 to 19 percent below the national average. With our basic low cost advantage Alabama does not find itself in a position to need to rush to judgment.

I believe it is in Alabama's best interest to tell Congress that one size does not fit all. We should be allowed to manage electric industry restructuring in Alabama in a way that is consistent with our individual needs, our individual resources and our particular economy.

The issues involved in restructuring the industry are not just complex, they are excruciatingly complex. Moreover, we simply cannot afford to get it wrong. This debate embraces not only questions of quality of life but indeed, our national security.

The risk we accept in reshaping our national electric power industry must be prudent to a fault and essentially failsafe. Not surprisingly, these certainties are available to policymakers as they strive to bring competition to the retail electric business.

I am convinced however, that the following observations will hold true as restructuring goes forward. First, deregulation is a misnomer. As trends go, probably different regulation, but not an absence of regulation. And this could result in some form of hybrid or quasi or market-based competition not sufficiently answerable either to regulators or to the market.

Second, there will be winners and losers among utilities and customers: acquisitions, liquidations and disfranchised customers. We are already seeing major mergers of the companies involved with the new "fuel of choice", natural gas.

Third, with no obligation to serve, reliability will be jeopardized. Fourth, restructuring will ultimately lead to a few global oligopolies due to mergers and acquisitions and the lack of full accountability to market our regulator. Market-based competition is better than regulation, however regulation is better than unbridled or freelance oligopoly.

Fifth, nuclear power will be especially vulnerable to competition. Sixth, restructuring industries in the name of competition does not guarantee lower prices. In fact, supply and demand and balances will likely drive prices higher in many States, and I refer you specifically to recent reports by the U.S. Department of Agriculture and by the American Gas Association.

The point is that not all of these factors may combine to create some sort of freelance oligopoly that is not truly answerable to the market or to the regulator. I feel that accountability and protections are more effective the closer they are to the customers.

The States are our source and the accountability provided by a State-crafted solution to a State-specific situation has to be preferable to a Federal, one-size-fits-all mandate. In Alabama, the Public Service Commission has opened a docket to investigate the feasibility of electric restructuring in Alabama.

We have received over 1200 pages of comment and our staff is studying that information in preparation for hearings that we will hold surrounding each of the several issue areas. Even at this preliminary stage of our investigation these comments at the State level make it more than evident that consensus is going to be hard to reach.

It is equally evident that these decisions that can be made at the State level should remain at the State level. It is clear that most legislation introduced at the Federal level is patterned after legislation and regulatory action from the high-cost States. The proper course of action for these high cost States is not the proper course of action for a low-cost State like Alabama.

And while not wanting to impede the progress of any State that has decided to implement a competitive retail market, I simply ask that Congress give equal consideration to the issues facing low-cost States as outlined in the Low-Cost States Initiative submitted earlier this year to each Member of Congress. And you will recall that the Low-Cost States Initiative carried the signatures of 23 of our States.

In summary, I believe that the best help Congress can give Alabama is to clarify jurisdiction to allow Alabama to craft the solutions best for our States, deal with purely Federal issues such as PUHCA and PERFA and Federal power agencies, and let the State

commissions and legislatures, who are the decision-makers closest to the conditions, continue to restructure as best suits our individual circumstances. Thank you.

[The prepared statement of Jim Sullivan follows:]

PREPARED STATEMENT OF COMMISSIONER JIM SULLIVAN, PRESIDENT, ALABAMA PUBLIC SERVICE COMMISSION

Mr. Chairman and Members of the Subcommittee: Good morning. My name is Jim Sullivan. I am the President of the Alabama Public Service Commission. I respectfully request that the written statement of the Alabama Public Service Commission be included in today's hearing record.

I greatly appreciate the opportunity to appear on behalf of the Alabama Public Service Commission before the Subcommittee on Energy and Power of the U.S. House of Representatives' Committee on Commerce as you study state and local issues involved with electricity competition.

Coloring any discussion of electric industry restructuring is the fact that Alabama is one of the so called low-cost states, and my first charge as a Public Service Commissioner is to ensure that the Alabama Public Service Commission keeps those rates down while keeping quality of service and reliability up. Based on recent published information, Alabama has electricity rates that are 17% to 19% below the national average. With our basic low-cost advantage, Alabama does not find itself in a rush to judgment.

I believe it is in Alabama's best interest to tell Congress that one size does *not* fit all. We should be allowed to manage electric industry restructuring in Alabama in a way that is consistent with our individual needs, resources and economy. The issues involved in restructuring the industry are not just complex—they are excruciatingly complex. Moreover, we simply cannot afford to get it wrong. This debate embraces not only questions of quality of life, but indeed our national security. The risks we accept in reshaping our national electric power industry must be prudent to a fault and essentially fail-safe.

Not surprisingly, few certainties are available to policymakers as they strive to bring competition to the retail electricity business. I am convinced, however, that the following observations will hold true as restructuring goes forward:

- First, "deregulation" is a misnomer—we are likely to see different means of regulation as industry restructuring goes forward, but not an absence of regulation. The result may well be some form of hybrid or quasi market based competition which is not sufficiently answerable to the market or the regulator;
- Second, there will be winners and losers among utilities and customers—acquisitions, liquidations, and disenfranchised customers. We are already seeing major mergers involving the companies involved with the new "fuel of choice", major gas companies;
- Third, reliability will be jeopardized with no obligation to serve;
- Fourth, restructuring will ultimately lead to a few global oligopolies due to mergers and acquisitions and the lack of answerability to market or regulator;
- Fifth, nuclear power will be especially vulnerable to competition;
- Sixth, restructuring industries in the name of competition does not guarantee lower prices. In fact, supply and demand imbalances will likely drive prices higher in many areas.

The point is that all of these factors will combine to create some "freelance oligopoly" that is not truly answerable to the market or the regulator. I feel that accountability and protections are more effective the closer they are to consumers. The states are at the source, and the accountability provided by a state crafted solution to a state specific situation has to be preferable to a federal, one-size-fits-all mandate.

In Alabama, the Public Service Commission has opened a docket to investigate the feasibility of electric industry restructuring. We have received more than 1,200 pages of comments and our staff is studying that information in preparation for hearings that we will hold surrounding each of several issue areas. Even at this preliminary stage of our investigation, these comments, made at the state level, illustrate how difficult it will be to reach consensus. It is equally evident that those decisions that *can* be made at the state level *should* be made at the state level. In our restructuring docket, we have received credible economic studies and ancedotal evidence that claim to "prove" conclusively that retail competition in Alabama will either

- Save each ratepayer in excess of $200 per year while producing major benefits for the Alabama economy as a whole, *OR*

- Cause all ratepayers to see a dramatic rate increase while significantly undermining the economy of Alabama.

Can Congress examine this dichotomy in Alabama and make a decision that is correct for Alabama? I submit that it cannot.

If there are such differing opinions of the proper path to follow in our state from those parties specifically concerned with Alabama and its economic well-being, how can a national one-size-fits-all mandate from Congress be better suited to the interests of Alabama and its citizens than solutions crafted by Alabamians? I don't believe it can.

It is clear that most legislation introduced at the federal level is patterned after legislation and regulatory action from the high-cost states. The proper course of action for these high-cost states is not the proper course of action for a low-cost state like Alabama. The Alabama Public Service Commission certainly does not want to impede the progress of any state that has decided to implement a competitive retail market. But we do ask this Congress to give equal consideration to the issues facing the low-cost states.

The comments received in the Alabama Public Service Commission investigation also point to certain areas that are not within our jurisdiction but require attention and resolution if restructuring is to proceed in Alabama.

One prime example is the current tax structure of our investor-owned jurisdictional utility versus the tax situation of the Alabama municipals, cooperatives, federal power agencies and new competitive suppliers. The tax changes that would occur through federal- or state-mandated retail competition are critical issues. Any loss of revenues caused by an ill-conceived plan could be disastrous for the state and local governments that rely on those taxes. The reform of utility taxes in Alabama will have to be crafted by the State Department of Revenue, the Governor's Budget Office and the Legislature. I can assure you that in Alabama, as in many other states, this will not be a quick or an easy project. The questions surrounding the tax status of public power entities will need resolution at the federal level, and the treatment accorded these agencies will have to be incorporated into the changes developed at the state level.

This is one example of federal/state conflict that needs to be addressed at the federal and state level. Other areas will need federal attention in order to allow the states to continue to lead the charge to restructure electricity markets as local conditions dictate:

- Affirming state authority to implement customer choice, if a state so chooses, without running afoul of the Commerce Clause or the Federal Power Act;
- Affirming state authority to deal with stranded costs—a problem created in the states and a problem that can best be addressed by the states in accordance with the amount and kinds of costs considered stranded and the impact and amount of recovery considered prudent in a given jurisdiction;
- Affirming state authority over delivery services, including transmission;
- PUHCA reform;
- PURPA repeal;
- Public power issues;
- Reliability and management of the grid.

Other areas of restructuring, besides taxes, lend themselves to resolution at the state level. These areas include public purpose programs and customer protection issues.

In summary, I believe that the best help Congress can give Alabama is to define jurisdictional issues so as to allow Alabama to craft the solutions best for Alabamians; deal with purely federal issues such as PUHCA, PURPA, and federal power agencies and let the state commissions and legislatures, who are the decision makers closest to the conditions, continue to restructure as best suits their circumstances.

Mr. BARTON. Are you going to give back time?

Mr. SULLIVAN. I will give back time.

Mr. BARTON. I tell you, that is unusual, especially as slow as we listen in Texas to you folks talking in Alabama. That is good. We appreciate that.

We would now like to hear the Honorable David Svanda who is the Commissioner for the Michigan Public Service Commission. And former Chairman Dingell is not here now but if he were here he would brag on you and tell you what a great job you are doing and how pleased he is at the efforts that Michigan is making. So

we have welcomed you. Your statement is in the record in its entirely and we will recognize you for 7 minutes also.

STATEMENT OF HON. DAVID A. SVANDA

Mr. SVANDA. Thank you very much, Mr. Chairman and members of the committee. It is a true pleasure and honor to be here. Let me legitimize my testimony from the outset by indicating that Michigan's First Lady, Michelle Engler, grew up in Texas.

I am pleased to be here before you today to discuss the importance of competition in the electric industry and to explain the status of industry restructuring in Michigan, and finally to encourage you and your colleagues to create a national vision for the electricity markets of the future.

Michigan likes competition. When the Detroit Red Wings won the national championship 2 years in a row in 1997 and 1998, we were proud. We were proud, not because it was the Wings' turn to win those championships, but because they fought hard. They fought against tough competition, they continually improved, and ultimately delivered the superior product.

Mr. BARTON. Who won?

Mr. SVANDA. Last national hockey championship. Just out of curiosity. It escapes me.

Mr. BARTON. Yes. I don't normally interrupt the witness, but some team in Dallas, I think, beat some team in New York.

Mr. SVANDA. That could be.

Mr. BARTON. Go ahead.

Mr. SVANDA. When our auto companies in the 1970's and the 1980's were really on the ropes, we were extremely proud of the way that they met their stiff competition from foreign competition. We are proud of the fact that labor, management, and government came together, not to create barriers to those new entities that wanted to sell their products into the American market, but instead, our companies responded by beating the quality, price, and performance of that competition.

They competed and we all won. The same philosophy underlies Michigan's initiatives in the trucking, telecommunications, natural gas, and now in the electric industries. During the past several years the Michigan Commission has focused attention on bringing competition to the electricity industry; a move which parallels the changes we have made in those other industries which were formerly insulated from market forces.

The first step occurred 5 years ago when the Commission issued an order that initiated retail wheeling on an experimental basis. We did that experiment for Consumers Power and for Detroit Edison. Together they serve about 90 percent of the retail market in Michigan.

At the time, competition in retail generation was a relatively new concept. Since then we have held meeting after meeting, hearing after hearing, listened to, responded to literally hundreds of stakeholders. Based on those comments we have continued to issue a sequence of orders that culminated this past March.

Those orders phased in customer choice and allowed the customers of Consumers Energy and Detroit Edison to select the generation, suppliers, and services that best met their own needs. The

chosen electrons have in fact, begun flowing and the participating customers have in fact, begun to realize significant savings.

I have to tell you though, that since my written testimony was prepared last week, there have been significant changes to the competition map that I know that all of you pay attention to.

Just this Tuesday, day before yesterday, in response to an appeal by our two largest utilities, the Michigan Supreme Court vacated the Commission's orders that established our retail access program.

While Michigan is continuing to consider the ramifications of this action, it certainly indicates the need for further legislation, both at the State and at the national level, and for that national vision that I encouraged you to create in my opening statement.

If we are to overcome these types of developments, and if we are to create an environment in which competition can flourish, we must have a national vision unconstrained by artificial, State boundary, market barriers. Several factors have led me to this conclusion.

First of all, the electricity industry is no longer focused on serving only those customers within a limited geographic industry. As has already been noted, the industry now has a national, even international scope. The market, like the electrons that it is based on, do not know State boundaries.

Second, regulated prices are inconsistent from utility to utility, and in many cases, well above those found in the market. Economic regulation and government protection have not been successful in keeping electricity prices low.

Some States with lower prices have achieved them in part due to the availability of inexpensive public power sources. That is an economic boost for them and a disadvantage to those of us unable to access it.

Third, electric generation companies, whether utility or non-utility generators across the country, are functioning in limbo. They are reluctant to build new generation resources until they have a clear understanding as to how the industry will develop. As a result, reserve margins are shrinking and system reliability may be in jeopardy.

While there is agreement from a cross-section of stakeholders that free markets are far superior to government protection and regulation, some are still not convinced. I can understand the concerns and I think we can respect those concerns and still achieve three important objectives.

First, if a State chooses not to offer its citizens choice, it should not limit the development of the market for those States seeking competition. Utilities and other generators located in States without a competitive initiative should not be prohibited by those States from participating in the market that is created by other States.

Second, multi-state companies stand to achieve the greatest gains from competition if they can include all of their facilities in their purchase agreements, whether or not those facilities are located in States offering choice. Without this opportunity, these companies will be weakened in their competitive efforts.

Third, an effective market depends on a transmission system capable of transporting power between the customer and the seller.

I mentioned earlier that Michigan has recently encountered bumps on our pathway to an open market. Actions taken by individual States alone will not result in the optimal development of a market in this country.

I am not alone in my believe that there is a need for strong, national leadership and strong national direction if we are to move the electric industry forward. I believe that Congress must use its authority to establish the paths for States to follow, and Congress must create an environment in which electricity can be traded and transported just like any other interstate commodity.

Perhaps the most important point that I want to leave with you today is that whenever you come to a fork in your legislative-making road, take the path that is marked "competition". I urge you not to introduce or expand regulation when there is an opportunity for the market to achieve a stated goal.

Resist the impulse to protect special interests; for example, the use of renewable resources is worthy objective. However, this objective can be achieved through the marketplace. Universal service and other public benefit programs likewise, will be better served by allowing the market to work as opposed to building funding requirements into legislation.

Fuel cells and micro turbines are excellent examples of new technologies that hold promise for electricity users to gain independence, and they should be allowed to fulfill their niche accordingly.

Thank you very much.

[The prepared statement of David A. Svanda follows:]

PREPARED STATEMENT OF DAVID A. SVANDA, COMMISSIONER, MICHIGAN PUBLIC SERVICE COMMISSION

My name is David A. Svanda and I am a member of the Michigan Public Service Commission. I am pleased to appear before you today to discuss the importance of competition in the electricity industry, explain the status of industry restructuring in Michigan, and seek your support for the adoption of comprehensive legislation to develop and expand the wholesale and retail electricity markets throughout the country.

Michigan likes competition. When the Detroit Red Wings won the Stanley Cup in 1997 and 1998, we were proud. Not because it was the Wings turn to win the Cup, but because they fought hard against tough competition, continually improved, and ultimately delivered a superior product—a National Hockey League championship. When our auto companies were "up against the wall" in the 1970's and early 1980's, facing stiff foreign competition, we were extremely proud of how labor, management, and government responded—not by erecting barriers to imports but by beating the quality, price, and performance of the competition. They competed and we all won. The same philosophy underlies Michigan's initiatives in the trucking, telecommunications, natural gas, and, now, electricity industries.Why are changes necessary?

I do not need to explain to you the transition occurring in the electricity industry. You have heard testimony and read the documentation on the changes consuming the industry, the reasons for these changes, and the perceived impacts of the changes, positive and otherwise. You have also heard that the savings resulting from competition will be an estimated $20 billion per year or more. States also have heard these messages. In over 20 states, legislatures have enacted, or state commissions have issued, comprehensive restructuring plans. Customers in many of these states are already experiencing savings from their participation in the market. Many other states are in the midst of investigating the potential for competition and may be joining us in offering their citizens choice.

During the past several years, the Michigan Commission has focused attention on bringing competition to the electricity industry, a move which parallels the changes we have made in the trucking, telecommunications, natural gas, and other industries that were formally insulated from market forces. The first step occurred five years ago when the Commission issued an order initiating a retail wheeling experiment for large industrial customers of Consumers Energy and Detroit Edison. To-

gether, these companies serve approximately 90% of the retail electric customers in the state. At that time, competition in retail generation was a new concept. Since then, we have held public meetings and comment periods, hearing from hundreds of stakeholders. Based on these comments, we have issued a series of orders culminating with an order on March 8, 1999. In this issuance, the Commission took the final steps necessary to phase-in customer choice and allow customers of Consumers Energy and Detroit Edison to select the generation suppliers and services that best meet their needs. The chosen electrons have begun flowing and the participating customers have begun to realize savings. While we are working with the utilities, alternate suppliers, and customers to smooth out the rough spots, we are also working with smaller investor-owned utilities and cooperatives to determine how they can most efficiently offer their customers similar opportunities.

In taking the action we have in Michigan, we have recognized that government regulation, as well-intended as it has been, cannot bring about the same degree of economic efficiency and innovation which is spurred by the competitive market. I believe that unrestrained competition can produce the best results. I also believe that, to create an environment in which competition can flourish, we must have a national vision unconstrained by artificial state boundary market barriers. Several factors have led me to this conclusion.

First of all, the electric industry is no longer focused on serving only those customers within a limited geographic area. The industry now has a national, even international scope. The market, like the electrons it is based on, do not know state boundaries. Cost effective transactions occur at the regional or multi-regional level. Small scale, jurisdictionally jealous regulation and government protection act as a drag on the development of a competitive market and should be dealt with by a sensitive visionary national policy.

Second, regulated prices are inconsistent from utility to utility, and in many cases, well above those found in the market. Economic regulation and government protection have not been successful in keeping electricity prices low. Some states with lower prices have achieved them in part due to the availability of inexpensive public power sources; an economic boost for them and a disadvantage to those unable to access it. In Michigan, we have recognized that our relatively high prices are a serious problem. High electricity prices are one reason Governor John Engler encouraged the Michigan Public Service Commission to investigate the introduction of competition into the electric industry by offering customers choices in the provision of their electric services. This direction is consistent with a move to the marketplace seen throughout the country and globally.

You see, in Michigan, we are competing for more than hockey trophies. We are competing for businesses that stay in, or move to, Michigan " competing to have our residents served economically and fairly. We are achieving economic strength through competition. As I am sure you realize, this competition is more hard fought than any sporting event, and the results are far more important to Michigan and its citizens. We are employing every tool available to us to win. One of the tools that we feel is critical to our success is the opportunity for these customers to choose the electricity supplier that best meets their needs—and budgets. Michigan has been consistent in its vision that competition can bring significant benefits to Michigan's businesses and citizens.

Third, electric generation companies, whether utilities or non-utility generators, across the country are functioning in limbo. They are reluctant to build new generation resources until they have a clearer understanding as to how the industry will develop. As a result, reserve margins are shrinking and system reliability may be threatened. Comprehensive federal legislation establishing a framework for a North American competitive market will provide generators with enough certainty to invest in new generation.

While there is agreement from a cross-section of stakeholders that free markets are far superior to government economic regulation, some remain unconvinced. I can understand their concerns. Yet, in a December, 1998 letter to Congress, 23 lower-cost states joined in saying they "do not want to impede the progress of any state that has decided to implement a competitive retail market in order to bring choice and lower electric rates to their consumers." I appreciate their sincerity and would like to offer three practical suggestions to help all of us achieve this end:

1. If a state chooses not to offer its citizens choice, it should not limit the development of the market for those states seeking competition. Utilities and other generators located in states without a competitive initiative should not be prohibited by those states from participating in the market in states permitting competition. No market, including Michigan's, will fully develop unless there are a large number of suppliers offering a number of services and products to customers. Market entry and expansion should not be limited artificially.

2. Multi-state companies stand to achieve the greatest gains from competition if they can include all of their facilities in their purchase agreements, whether or not those facilities are located in states offering choice. Without this opportunity, these companies will be weakened in their competitive efforts. A multi-state company should be permitted to structure its transactions to make the best use of all of its competitive assets, whether or not all of its facilities are located in a choice state.

3. An effective market depends on a transmission system capable of transporting power between the customer and the seller. Transmission constraints within a state may jeopardize competition in neighboring states. Michigan is transmission constrained. Without additional investment in transmission facilities, it will be difficult to take full advantage of generation sources outside our borders. Through Order 888, initiating open access, and its recent Notice of Proposed Rulemaking on Regional Transmission Organizations, the Federal Energy Regulatory Commission is pursuing resolution of problems in the transmission system. These initiatives merit Congressional acceleration and strengthening. Michigan supports these efforts and I have heard this support echoed by other Midwest States.

What should Congress do?

In Michigan we are pleased with our accomplishments. It is important to point out, however, that the task is not complete. We are actively seeking ways to expand the electricity market, attract new suppliers, and enable them to get their products to their customers, all while maintaining the reliability of the transmission grid. However, actions taken by individual states alone will not result in the optimal development of the market. I am not alone in my belief that there is a need for strong, national leadership if we are to move the electricity industry forward. I believe that Congress must use its authority to establish the path for states to follow and Congress must create an environment in which electricity can be traded and transported just like any other interstate commodity. If you determine that it is necessary to offer states the opportunity to "opt out" of competition, I urge you to condition this opportunity on their agreement not to limit the development of competition in neighboring states. Issues clearly within the state's purview which will not interfere with the development of competition elsewhere, such as customer education standards and levels of stranded cost recovery, should remain with the states.

Perhaps the most important point I want to make to you today is this: whenever you come to a fork in the road, take the path marked "competition." I urge you not to introduce or expand regulation when there is the opportunity for the market to achieve a stated goal. Resist the impulse to protect special interests. For example, the use of renewable resources may be a worthy objective. However, this objective can best be reached in the market place rather than through government mandates. Universal service and other public benefit programs likewise will be better served by allowing the market to work, as opposed to building funding requirements into legislation. Fuel cells and micro turbines are technologies that hold promise for electricity users to gain independence from the electric grid, and should be allowed to find their niche in the electricity marketplace without restrictive regulations or surcharges. Throughout history, free markets have been shown time and time again to work more effectively than any regulatory structure. If markets are to work, competition must supersede protection of special interests. I ask you to set forth the framework in which markets are allowed to do their work.

Thank you for the opportunity to share these thoughts with you today. I will be happy to answer any of your questions now or at any time in the future.

Mr. STEARNS [presiding]. I thank the gentleman. Our last panelist, witness, is Honorable William Nugent who is Commissioner, Maine Public Utilities Commission. The Chairman Barton is coming back. We are going to continue to do this. I am going to stay here until he comes back so I advise members to use their own discretion in going to vote.

Go ahead. You have 7 minutes.

STATEMENT OF HON. WILLIAM M. NUGENT

Mr. NUGENT. Thank you, Mr. Chairman, members of the committee. Thanks for the opportunity to join you in discussing this important public policy matter. And I have been asked specifically, as you might expect, to address Maine's specific approach to restructuring.

In Maine, something was broke. While Maine has on average, the lowest electricity rates in New England, New England has the highest rates in the country. Our residents paid in 1997, an average 12¾ cents per kilowatt hour; at the margin, 15 cents per kilowatt hour in the larger service territory.

Our industrial rates, by far the lowest in New England at 6.4 cents, were nearly 2 cents per kilowatt hour above the national average rate that year. The Maine legislature established a collaborative to develop a plan to restructure the electric industry. It was unable to come to an agreement.

They then turned to the Commission. The Commission gave the legislature a plan. The legislature reviewed, revised and passed the plan unanimously in both Houses in 1997, and we have been writing, implementing rules ever since. The best program description is in the law. I have given you a copy of that in electronic format.

Key to the success of Maine's search for lower electricity prices is getting as many sellers as possible to sell in the Maine market. That is why we believe we have created the most competitor-friendly rules of any retail electricity market in the country.

Starting next March, Maine's entire electricity market will be open to retail competition. Any electricity customer—residential, commercial, or industrial—will be able to buy power from whichever licensed seller of electric generation the customer chooses.

Now, real markets are created by putting as many willing buyers in contact with as many willing sellers as is possible. To do that, Maine is opening its entire, as I have said, retail electricity market, 12 billion kilowatt hours a year, 1800 megawatts of demand, to competition.

There is no price cap, no mandatory percentage reduction in retail prices. For better or worse, as true markets do, the market will set the price for generation in Maine starting in March 1, 2000.

To ensure fair competition, Maine law requires Maine's investor-owned utilities to divest their generation assets to become transmission and distribution utilities, T&D companies only. Further, if the T&D companies choose to sell in their T&D service territories, power generated by others, the law restricts the amount they can sell and imposes rigorous codes of conduct to govern the relationship between their power marketing and T&D divisions.

The object is to ensure as level a playing field as possible for all competitors. Our largest utility is said that it will not sell generation. The second largest to-date has not set up a marketing arm. These two companies, representing more than 88 percent of Maine's total sales apparently will remain, as far as the electricity industry is concerned, only wires companies.

State regulated, transmission and distribution utilities; the deliverers of competing generator's products. They have left the marketing of energy to whomever wants to compete in America's most open, retail, electricity market. That means the competitors will find in most of Maine next March no incumbent utility selling generation.

The T&D companies must, by law, provide information impartially to all market participants and they will provide billing services. No one has got to feel sorry for these investor-owned utilities. That same law which restructured the industry gave them the

right to recover all of their legitimate, verifiable, and unmitigatable costs stranded as the result of Maine's change from a fully regulated to a competitive retail industry.

A competitive generator can win customers in Maine market in two ways. It can find the prospect, convince them of the quality and value of this product, and sign him up. Or the competitor can win all or part of the Maine's standard offer bit. This is Maine's so-called default service. The right to be the provider of last resort.

It is likely that a substantial number of Maine's retail electricity customers, totally free to choose as of next March 1, simply will not choose: either intentionally or because they are unaware that they can. That likely will include a substantial majority of residential customers, perhaps a majority of commercial customers, and even some attractive industrial customers.

We offer no projections of how many such customers there may be. Market research is the competitor's job and they do it better than government bureaucrats do. On August 1 we will provide all bidders who have registered with us a copy of our Request for Bids on the right to serve for 1 year, Mainers who don't choose.

They can bid to serve all or a portion of any or all of three categories: essentially residential, commercial, and industrial. Bid are due back in October 1. Billing determinants for deciding the winner are specified in our rule. Winners will be announced no later than December 1.

Competitors who do not bid or bid on but do not win this standard offer will know on December 1 what the bogey is; what the standard offer price is against which customers will measure their prices. Competitors must be licensed by us to sell generation in Maine. To be licensed, a competitor need only prove its technical and financial capability and give us $100; then it gets its license. We have already issues several licenses.

Maine law requires that each electricity product include not less than 30 percent renewables and efficient energy; the Nation's largest such requirement. It is a standard we believe will be easy to meet. In 1997, 46 percent of Maine's power came from renewable or efficient sources.

Maine has already begun a $1.5 million consumer education program. Bills have been unbundled for 6 months allowing consumers to see energy and delivery as separate components of their electric consumption.

We are also trying to demonstrate the value of open, competitive markets in a previously regulated portion of a vital industry and thereby make Maine's economy more competitive.

We hope that however you proceed, Federal legislation will not interfere with States that have already acted to revamp their retail electricity markets, so long as we are generally not inconsistent with Federal policies. Each State may have legitimate reasons for differing from another with respect to, for example, the precise treatment of stranded costs, timing of competition for various groups of customers, consumer protection rules, and so on.

And I thank the Chair for the opportunity to speak and look forward to questions.

[The prepared statement of William M. Nugent follows:]

PREPARED STATEMENT OF WILLIAM M. NUGENT, COMMISSIONER, MAINE PUBLIC UTILITIES COMMISSION

Mr. Chairman and Members of the Subcommittee, I am William M. Nugent, now in my eighth year as a Commissioner on the Maine Public Utilities Commission. I am a former President of the New England Conference of Public Utility Commissioners, Chair of the Regulatory Strategies Subcommittee of the National Association of Regulatory Utility Commissioners, and a member of that Association's Executive Committee.

I have been asked to testify on Maine's unique approach to utility restructuring, and to offer comments on PURPA and PUHCA reform.

Maine has had a recent, unhappy experience with electricity rates.

Over a 5-year stretch from the mid-1980s through the early 1990s Maine's electricity rates rose more than 50 percent. Consumers total bills continued to rise markedly despite aggressive conservation programs.

While Maine's electricity rates, on average, continue to be the lowest in New England, Maine's once substantial advantage over the balance of New England has narrowed considerably. And New England's average prices are well above national averages and far above prices in the lowest-price states. And the all-consumers average price masks substantial burdens.

Comparing 1997 average prices, Maine at 9.5 cents per kwh was a full cent below the New England average, but Maine's average residential price per kilowatt hour—the average price for Maine's electorate—was 12.75 cents per kilowatt hour, second highest in New England. The U. S. average in 1997 was 8.43 cents per kilowatt hour.

Maine's industrial users—operators of large, efficient, well-managed loads—enjoyed by a wide margin, the lowest average price in New England: 6.36 cents per kilowatt hour, compared to 8.4 cents, the average industrial price for the other five New England states. The national average industrial price in 1997 was 4.53 cents per kilowatt hour. While Maine industry enjoyed an advantage relative to industry elsewhere in New England, it was substantially disadvantaged relative to elsewhere in the U. S.

These prices soon started to become unsustainable. Business's threats to move to lower-priced states, to install major energy conservation devices, to install self-generation, and to change fuel sources, combined with a vigorous political protest from residential users prompted a fundamental review of the way in which Maine acquires its electricity resource. In 1995 the Maine Legislature directed us to comprehensively review the problem and to recommend a Plan to Restructure the State's Electric Utility Industry.

We did so, recommending in broad outline in December 1996 that

- As of January, 2000, all Maine consumers would have the option to choose an electric power supplier.
- As of January, 2000, Maine would not regulate as public utilities companies producing or selling electric power.
- Regulated public utilities would continue to provide electric transmission and distribution services.
- As of January, 2000, Maine's largest electric utilities would be required to structurally separate generation assets and functions from transmission and distribution functions (T&D). By 2006, the large utilities would be required to divest generation assets. Municipal utilities and electric cooperatives would be required neither to separate nor to divest generation.
- Existing contractual obligations with qualifying facilities (QFs) would remain with the T&D companies. T&D companies would periodically sell to the highest bidders the rights to market the power associated with QF contracts. The lawful obligations of the QF contracts would not be modified.
- Standard offer service, at a price no higher on average than available in 1999, would be available to customers who elect not to choose an alternative generation provider, and for customers who cannot obtain service on reasonable terms from the market.
- The Legislature fund low-income assistance programs through the general fund or by an equitable tax or surcharge on all energy sources. In the alternative, low-income programs could be funded through the rates of the T&D companies.
- All retail providers of generation would be subject to a minimum renewable supply requirement, which could be achieved with tradeable credits.
- Conservation and load management programs would be funded through the rates of the T&D companies.
- Utilities would have a reasonable opportunity to recover generation-related costs stranded as a result of retail access.

- The Commission would work to ensure that the regional bulk power market is structured to maintain reliability and to advance fair and efficient competition.

In an extraordinary effort of self-education, Maine's citizen legislators read deeply on this subject and conducted weekly seminars on electric restructuring. In May of 1997, the Maine Legislature passed—unanimously in both houses—a landmark bill restructuring the State's electricity industry. The bill as passed chose March 1, 2000, as the start date and gave the Maine Public Utilities Commission the intervening 33 months to consult with interested parties and to write implementing rules.

The following fundamental principles guided the Legislature's path to retail access:

- Where viable markets exist, market mechanisms should be preferred over regulation and the risk of business decisions should fall primarily on investors rather than consumers.
- Consumers' needs and preferences should be met with the lowest societal costs.
- All consumers should have a reasonable opportunity to benefit from a restructured industry.
- Industry restructuring should not diminish environmental quality, compromise energy efficiency, nor jeopardize energy security.
- All consumers should have access to reliable, safe, and reasonably priced electric service.
- Industry restructuring should not diminish low-income assistance or other protection to less fortunate customers.
- The industry structure should be understandable to the public, fair and perceived to be fair, and lawful.
- Industry restructuring should improve or maintain Maine's business climate.

Maine's legislation comports with these fundamental principles and approaches industry restructuring in a manner that is viable, efficient and in the public interest.

The best description of the program is in the legislation itself. And it is quite readable. I will leave the Committee a copy of the law, Chapter 316, P. L. 1997, in electronic format.

Key to the success of Maine's search for lower electricity prices, prices more in line with national averages than regional outliers, is getting as many sellers as possible to sell in the Maine market. That's why the Maine Legislature and the Maine Commission created the most competitor friendly rules of any retail electricity market in the country.

Starting March 1, 2000, Maine's entire electricity market will be open to retail competition. Any electricity customer, any electricity customer—residential, commercial or industrial—will be able to buy power from whichever licensed seller of electric generation the customer chooses.

Maine believes that real markets are created by putting as many willing buyers in contact with as many willing sellers as is possible. To do that, Maine is opening to competition its entire retail electricity market—12 billion kilowatt hours a year, 1800 megawatts of peak demand. There is no price cap, no mandatory percentage reduction in retail prices. For better or worse, as true markets do, the market will set the price for generation in Maine starting March 1st, 2000.

To ensure fair and open competition, Maine law requires Maine's investor-owned utilities to divest their generation assets, to become transmission and distribution utilities, T&D companies only.

Further, if the T&D companies choose to sell in their T&D service territories power generated by others, the law restricts the amount they can sell and imposes rigorous codes of conduct to govern the relationship between their power-marketing and T&D divisions. The object is to ensure as level a playing field as possible for all competitors.

Central Maine Power Company, whose sales represent more than 75 percent of statewide totals, has said that it finds the restrictions so slanted in favor of new market entrants that it will not—I repeat, will NOT—sell electric generation. Bangor Hydro, Maine's second-largest IOU, to date has not set up a marketing arm.

These two companies, representing more than 88 percent of Maine's total sales, are, and apparently will remain as far as the electricity industry is concerned, only wires companies, state-regulated transmission and distribution utilities, the deliverers of competing generators' products. Maine's two largest T&D utilities have left the marketing of energy to whomever wants to compete in America's most open retail electricity market.

By law, Maine's T&D companies

- may not own generation,

- must provide information impartially to all market participants, and
- must provide billing services—that is, the wires company will collect and remit fees.

No one need feel sorry for these companies. The same law that restructured Maine's electricity industry gave them the right to recover all of their legitimate, verifiable, unmitigatable costs stranded as a result of Maine's change from a fully regulated to a competitive retail electricity industry.

A competitive provider can win customers in the Maine market in two ways. It can find a prospect, convince him of the quality and value of the competitors product, and sign him up.

Or the competitor can win all or part of the Maine Standard Offer bid. This is Maine's so-called "default" service, the right to be the provider of last resort. We call it the Standard Offer provider.

I believe it likely that a substantial number of Maine's retail electricity customers, totally free to choose as of next March 1st, simply will *not* choose—either intentionally or because they are unaware they can. That may include a substantial majority of residential customers, perhaps a majority of commercial customers, and even some attractive industrial customers.

We offer no projections of how many of such customers there may be. Market research is the competitor's job, and they are far better at it than utility regulators are.

On August 1, 1999, we will provide all bidders who have registered with us a copy of our request for bids on the right to serve for one year Mainers who don't choose. You can bid to serve 20-40-60-80 or 100 percent of any or all of three categories:

- residential and small commercial,
- medium commercial and industrial, and
- large commercial and industrial.

Bids will be due October 1. Prices for the residential and small commercial portion of the competition must be stated in cents per kilowatt hour. For the two larger categories, bidders may present their bids as they wish: demand and energy charges, as they see fit. Billing determinants for deciding the winner are specified in our rule. Winners will be announced no later than December 1.

Competitors who do not bid on—or bid on but do not win—the Standard Offer, will then know on December 1, what the "bogey" is, what the Standard Offer price is against which customers may measure your price.

Competitors must be licensed by the Maine Public Utilities Commission to sell generation in Maine. They can be licensed as a competitive energy provider, as a broker, or as an aggregator. We have already issued several licenses.

How onerous is Maine's licensing requirement? A competitor need only prove its technical and financial capability and give us $100, and it gets its license.

Maine law requires that each electricity product includes not less than 30 percent renewables, the Nation's largest such requirement. But the Legislature also defined renewables very broadly. It includes the usual—wind, solar, geothermal, hydro (from units of not more than 100 megawatts) but also trash-to-energy and cogeneration plants which are at least 65 percent efficient.

It is a standard that's easy to meet. In fact, there is a lot of renewable power in Maine; in 1997 46% of Maine's power came from renewable or efficient sources.

Compliance is measured annually. Over a year (not any particular hour, day, week, or month) 30 percent of each product's generation must come from the renewables. The rule even gives time to make good any shortfalls.

Maine's investor-owned T&D companies will put out to bid the rights to the electricity acquired through their NUG contracts on a schedule that will parallel the Standard Offer bidding schedule—Requests for Bids out on August 1, back on October 1, awarded by December 1, except that the bidding will be held at 2-year intervals.

Maine has already begun a $1.5 million consumer education program. Bills have been unbundled for 6 months, trying to get consumers to see energy and delivery as separate components of their electricity consumption.

Maine very much hopes competitive electricity providers will participate in both parts of the Maine market—competition for retail customers and for the Standard Offer. We have tried to create a fair opportunity to compete, win, and profit. We also seek to demonstrate the value of open, competitive markets in a previously regulated portion of a vital industry.

To sum up this portion of my testimony, we have wholeheartedly moved to a market model for generation.

- Maine has required divestiture of generating assets (and sales of the QF output), and placed close restraints on (in-territory) marketing by utility affiliates. These

measures prevent vertical market power and are intended to encourage entry by competing sellers of generation.

- Maine allows the market (not regulators) to set the price for default service (i.e. our bid-priced standard offer service). There are risks to pricing too high (customers pay too much) and to pricing too low (competitors stay away), and using bids is the best way to avoid both problems to the extent possible.
- All classes of customers are able to purchase at retail; no mandatory (e.g. municipally-mandated) aggregation, but voluntary aggregation is encouraged.
- All previously existing consumer protections have been maintained.
- Maine is paying appropriate attention to customer education; we require uniform disclosure labels (permitting apples to apples comparisons on price, generation source, and emissions characteristics).

Equally important to the success of our effort to win more economic prices are good rules for access to and the pricing of transmission. Maine and the other New England commissions have played a major role in forming and supporting the Independent System Operator. The ISO employs operating procedures which ensure system reliability and supports a region-wide competitive wholesale electricity market which is critical to the restructuring efforts across New England.

However you proceed, Federal legislation should not interfere with states that have already acted to revamp their retail electricity markets (so long as there is general consistency with the federal policies). Each state may have legitimate reasons for differing from another with respect to, for example, the precise treatment of stranded costs, timing of competition for various groups of customers, consumer protection rules, etc.

PUHCA

While Maine has little experience with holding companies, I believe reform or repeal of PUHCA should be considered in light of discussions on comprehensive legislation to revise the Federal Power Act and restructure the electric utility industry through appropriate State processes.

- Legislation should maintain effective State and Federal regulation against abusive practices that could place undue market power with multistate holding companies and harm development of competition.
- Any legislation should recognize that regulation should be reduced only as competition becomes effective at preventing monopoly abuses and allowing pro-competitive change and availability of customer choice.
- Any comprehensive legislation should provide for:
  - —State consent for sale, encumbrance, or disposition of existing state jurisdictional rate-based facilities.
  - —Reporting obligations concerning investments and activities of multistate public utility holding company systems.
  - —Restrictions against assumption of liabilities of non-regulated activities through securities issuances, guarantees, endorsements, or sureties and the pledging or mortgaging of assets.
  - —Protection against abusive affiliate transactions.
  - —Prohibitions against reciprocal arrangements entered into in order to avoid the provisions of that legislation.
  - —Federal and State commission access to books and records.
  - —Independent audit authority for State commissions.
  - —Non-preemption of State rate authority.
- Nothing in that legislation should affect the authority of State commissions under State laws concerning the provision of utility services, to regulate the activities of a public utility which is an affiliate, subsidiary or associate of a multistate public utility holding company, and to impose other relevant consumer protections.

Any comprehensive legislation should provide the States with the flexibility to respond to changes in the utility industry arising from market forces, technology, or financial conditions.

PURPA

PURPA's mandatory purchase requirement should not apply in any state which has made a finding that the acquisition of generating capacity is subject to competition or other acquisition procedures such that the public interest is protected with respect to price, service, reliability and diversity of resources.

Legislation that would repeal a utility's obligation to purchase wholesale power from QFs at avoided cost rates should be prospective in nature. And relief from this statute should be contingent upon the development of competitive markets as determined through a State commission supervised restructuring program.

Thank you, Mr. Chairman and Members, for the opportunity to present my views.

Mr. BARTON. We thank you, Mr. Nugent. We appreciate your testimony. I want to apologize to the panel. We have had two votes in the last 30 minutes and normally we don't vote very often in the morning, so it has taken our members away.

We need to continue our hearing though, so I am going to start the question period. I am going to turn the clock to 5 minutes and I will recognize myself for the first 5 minutes of questions.

The first question is to my two State legislators. This is more for the record so that other members might hear and read the record, or a summary of it, later.

Could each of you explain how Texas handles the market power issue? Since you did it somewhat innovatively compared to some other States.

Mr. WOLENS. Mr. Chairman and members, there are two ways of addressing market power, or market power of use. One is a very technical method, which is the HHH method, which is highly technical, and the other is the Goldilocks method. We chose to use the Goldilocks method. We were looking for something that was not too hot or not too cold.

And what we did is, we looked at the major incumbents in Texas and we looked at what amount of power that they had in Texas, and we came to 20 percent. And what we came down to in our legislation was that no company could have greater than 20 percent in a power region.

It is a complicated political issue what region that becomes, because if you narrow the region, for example, North Texas, you might see that Texas Utility might have 80 percent in North Texas but in ERCOT they would be quite a bit less than that.

So the political issue for the Senate and for the House was, what is that region? It was pretty much David's call to put it in a power region and that is what we did.

But I would like to mention that there is an issue that we couldn't overcome which is, how do you address market power outside of ERCOT? There are three other power regions that touch Texas: in the North, and the East, and the West.

Mr. BARTON. And for the audience, ERCOT is the Electricity Reliability Council of Texas.

Mr. WOLENS. Yes sir.

Mr. BARTON. It is the independent system operator or the TRANSCO.

Mr. WOLENS. It is. But Texas also has the Western Systems Coordinating Council, Southwest Power Pool, the Southeastern Reliability Council. And we cannot dictate what the market power, potential abuses, and how to control those potential abuses, are going to be in those power regions that have authority over multiple States, part of which touch on Texas.

So if the Federal Government is going to address the issue, one area that must be addressed is in part, market power in these overlapping areas.

Mr. BARTON. It is my understanding that you have a cap, a 20 percent cap, but you don't require divestiture of the generating capacity. The owner of the generating capacity, if they're over 20 percent, can lease that capacity, is that correct?

Mr. WOLENS. That is absolutely true. We're not into mandatory divestiture in Texas. So we invited alternatives to that and one was selling it into a market place.

Were there any others that we left? Alternatives?

Mr. SIBLEY. Well, they can sell it, they can have roll-ups, they can combine generation resources or assets and spin them off, sell stock in them.

Mr. BARTON. But after 2007 when the "price to beat" and all that goes away, there doesn't remain a market cap provision, is that correct? Once we get through the transition period?

Mr. SIBLEY. No, there is still the 20 percent that remains there but we——

Mr. BARTON. There is a power——

Mr. SIBLEY. We have another market power test and that is a 40 percent market power test on the retail side. So we don't——

Mr. BARTON. Right. To lose they have to lose 40 percent of their base——

Mr. SIBLEY. In their common service area they have to lose 40 percent before they——

Mr. BARTON. Before they can compete.

Mr. SIBLEY. That goes away after 3 years.

Mr. BARTON. Senator Sibley—and I am going to ask some questions of the other witnesses, too—but the way that Texas did stranded costs is fairly innovative. Can you explain—and I am not sure I even understand what you did—but you come up with a bond, some sort of a stranded cost bond?

Mr. SIBLEY. To allow them to securitize; securitization of what is verifiable as far as stranded costs go. Now, also I would refer you to Representative Wolens' chart because our price freeze is linked to the payment of stranded costs also.

And we freeze them at what I would say is an artificially high rate right now. But we recover all of those costs over where the utility would have been otherwise, and that goes to mitigate stranded costs.

Mr. BARTON. But the securitization means that if they can verify to the PUC that there is in fact, a cost that has been incurred, they can issue a bond based on the value of that cost that they then pay off over time, which means the rate they have to charge the existing customer is lower. Is that correct?

Mr. SIBLEY. That is correct. Whatever the verifiable amount is for stranded cost, we allow the utility to securitize that right now which means that they sell bonds for that amount, they pledge against that future cash-flow I guess, but you get a lower rate. The only way we let them do that is if it would save the consumer money.

Mr. BARTON. The reason you get a lower rate is that the cost to borrow may be 7 or 8 percent, yet the rate of return that they are allowed on the transmission of their total assets is going to be higher than that.

Mr. SIBLEY. That is correct.

Mr. BARTON. So that that difference is the savings.

Mr. WOLENS. It is 14.51 percent. It is a guaranteed 10 percent and then we put it at an amount to cover taxes. So it comes to

14.51 percent. If you securitize, we will securitize at about 7 percent and it has the effect like mortgaging your home.

Mr. BARTON. Right. So that that gap, that delta, is the savings to the existing customer.

Mr. WOLENS. It is an enormous savings—between 14-plus percent and 7 percent. It is half.

Mr. BARTON. I am not aware of any other State that has done that, and that is very innovative.

Mr. WOLENS. California did it but they loused it up a great deal.

Mr. BARTON. We have five Californians on the committee, so we have got to be careful. We learn from California, is the way we would look at it.

Mr. WOLENS. And they invited us to learn from them. They considered themselves to be the experiment for the rest of us. And when we visited California we talked to State Senator Steven Pease who was the Senate sponsor. He said, this is what we did, we are first out of the gate, you all see what we did wrong and make it better. And that is what we tried to do.

Mr. BARTON. My time is expired. I want to ask one question to the gentleman from Michigan and then I will recognize the gentleman from Illinois.

Could you explain why the Court in Michigan earlier this week ruled against the challenge of the Michigan Utilities that the retail choice plan that the PUC had put in place was correct? What was the reasoning for the Court ruling? Or did I get that exactly wrong, the way I asked the question?

Mr. SVANDA. No, you got it fine. It was a very narrow issue that the Court responded to, and that issue was whether or not we had specific statutory authority to order our utilities to carry the power produced by a third party. And on that basis our orders and the phasing-in process is now in question.

Mr. BARTON. So the Court ruled you do have the authority?

Mr. SVANDA. We do not have the authority.

Mr. BARTON. Oh, you do not have the authority. So the retail choice plan does not go into effect? So what the Court ruled is, that you have to go to the Michigan legislature, is that correct?

Mr. SVANDA. For that authority piece, yes.

Mr. BARTON. Okay. The gentleman from——

Mr. SVANDA. If I could follow on. That's my answer today.

Mr. BARTON. The record is open for a couple of weeks.

Mr. SVANDA. The Court ruled on Tuesday and we are still understanding the implications along with the other actors in Michigan. Certainly, our utilities and all of the other parties that have played an important role so far are looking at the implications.

Mr. BARTON. But what that means, unless your answer changes, is that unless the Michigan legislature decides to either give your Commission the authority or to do it themselves legislatively, there cannot be a retail choice put in place in Michigan. If we don't mandate at the Federal level that Michigan has to do it; which we are not going to do.

Mr. SVANDA. That would be my understanding, again today, unless there were a voluntary effort for example. And were that to be the case then I guess I would have to wonder how vibrant that

marketplace might become with a voluntary effort controlled still by the incumbent utility.

Mr. BARTON. Okay. The gentleman from Illinois is recognized for a long 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. It is good to be quick, otherwise I was way down on the list.

First of all I want to say, God Bless the Republic of Texas. Your efforts have helped those States who have moved. I am from Illinois. And it has helped push the issue of the States working it out and doing the job and we ought to let them resolve most of the conflicts. And with your efforts that brings on another large State that helps us here, making sure that we do no harm. So thank you for your work.

I want to ask a question to Mr. Svanda. Is that pronounced right? First of all, are you appointed or elected?

Mr. SVANDA. Appointed.

Mr. SHIMKUS. By the Governor?

Mr. SVANDA. Correct.

Mr. SHIMKUS. With the advice and consent of the Senate. That is right, because you were saying, I don't know next week what I might say. I was just wondering—it sounded very political.

But you bring up a point in your testimony that is one—I am a second-term member. I have been involved in this issue I think, very focused for about 30 months. And you bring up an issue that is really—has not been a contentious point but you take it—on issue one on page 6 you talk about reciprocity and you State that, it is okay if a State doesn't open up its markets, and it is good for competition to allow, i.e., a Detroit Edison to go into other States that are open.

I will argue against that as not being good or fair to those industries in the States or those States that have moved to aggressively open the market to allow a State who has not, protecting the current, monopolistic practices, to allow them to go cherry-pick throughout the country.

I would like to have your comment and then I would like to ask for my friends from the great Republic of Texas to respond how they would feel if they opened up the market but then allowed States who have not opened up their markets, to come in and aggressively compete?

Mr. SVANDA. I understand the real difficult issue that you do raise with that question. And I attempted in my comments to put that in the context of moving to a competitive marketplace. That a State that chooses not to open its marketplaces should not restrict its companies, its utilities, from somehow competing otherwise in other open markets.

And so my comments were aimed at encouraging allowing as many competitors in the country to compete in those open marketplaces. And I think that would teach valuable lessons across——

Mr. SHIMKUS. But you also understand that it stops the legislative process because legislation will not get passed by allowing protected markets to compete in competitive markets?

Mr. SVANDA. I understand that difficulty, and we——

Mr. SHIMKUS. And you are speaking as an appointed person, not an elected person now?

Mr. SVANDA. Yes.

Mr. SHIMKUS. Because it just can't be done. My friends from Texas?

Mr. SIBLEY. I would agree with you. I would look very strongly at a reciprocity-type provision in the next session of the legislature. If it turns out to be unfair advantages or competitive disadvantages through utilities from States that have opened up to the favor of those who have kept a monopolistic system, I don't think that would be fair.

Mr. BARTON. Would the gentleman yield on that?

Mr. SHIMKUS. I will.

Mr. BARTON. So as a State that has acted, you wouldn't oppose if we put some sort of a reciprocity provision in the Federal law? We will give the great State of Alabama the right to do everything they want to do except sell outside their State lines if they don't allow the great utilities in Texas and other States to sell within the great State of Alabama.

Mr. SIBLEY. I would favor that strongly. When Mr. Sullivan was talking earlier. I think one of his first statements was, one size doesn't fit all. I totally agree with that. After that I disagreed with just about everything he said.

Mr. BARTON. Well, but he has got the right to say it, and he says it so well.

Mr. SIBLEY. No, and I do agree with him. If they want to do that, I will tell you as Chairman of the Economic Development Committee in the Senate of the State of Texas, I would wholeheartedly support his keeping Alabama closed.

And because I believe as people look to make economic development decisions about where they put their plants, I think they are going to look at those who give people choices. And so I would be willing to take my chances with that and I would defend his wanting to let the State of Alabama make those decisions. I totally support that.

Mr. BARTON. I agree with you.

Mr. WOLENS. I might quibble with that. It is starting to look and smell like import fees or quotas, and it benefits us in Texas to have more people come and compete. The more competition that we have in the State the more it is going to be to drive down prices.

The more that come in it will drive down prices in Texas and I want to benefit consumers in Texas; be they on rooftops, be they commercial, be they industrial. Let those people come in and do generation or let them come in and do electric retailing.

But again, we still have a Federal issue—not only of the market power that we discussed, but there is still an issue of tariffs in those States that don't have tariffs—how it impacts us in those power regions that overlap us in Texas. And the other one is on the ISO—the Independent Systems Operator, which you folks call the RTO—the Regional Transmission Organization and in those power regions where they are not developed it creates a problem.

Pardon me for interrupting.

Mr. SHIMKUS. No, the question was directed to both of you all and I appreciate your answers. The final point that I want to address is, we have been moving and are just excited this year of our

working group and the chairman's leadership, and there are issues that we need to be involved with.

And one that we have heard over and over again and really addresses this issue of competition within States also, is the siting of new transmission lines. I will throw that out and maybe go down the table and address that real quickly.

Mr. BARTON. This will have to be the last question and then we will let Mr. Whitfield have his time. Answer the gentleman's question.

Mr. SIBLEY. I don't see transmission as a competitive endeavor. I see that as—I want to say inherently monopolistic—but I would prefer to let the RTO make a decision about where the transmission lines ought to be sited to do that more efficiently.

I think leaving that to engineers and people who makes those types of decisions is probably better than just having a free-for-all as far as the siting for it. Because you are going to get into condemnation issues and other things that I think would probably be done by a quasi government entity.

Mr. WOLENS. And I totally agree except again, it is a "you folks" issue to deal with the soda straw problems, going from one State to another State within a power region. But other than that, I have nothing further to add to what Senator Sibley did.

Mr. SULLIVAN. I think transmission has to yield equal access, and I think at this point in time we are moving in that direction. I think FERC is taking the proper steps to assure that. And I think that we ought to allow that process to continue as it is.

Mr. SVANDA. I think FERC is probably taking the correct steps but they are doing it way too slowly. We need to assure open access real soon or a lot of competitive activities will fall by the wayside.

Mr. NUGENT. We have a fairly open transmission system around New England; have had it for about 30 years. But I see problems cropping up in the area you have identified and I don't yet have the answer. We have a situation of an integrated electricity grid covering six States.

Siting will become a problem when it becomes a question of say, somebody building a plant in Connecticut to serve Maine and there is inadequate transmission across that routing.

I think much of the transmission decisions should be left to the States but there may become a time when we have got to rely on some Federal authority to make sure that the transmission system is robust enough to support a fully competitive market. And we are working to answer those questions.

Mr. BARTON. Gentlemen, Mr. Sawyer is back. I said I would recognize Mr. Whitfield. Mr. Whitfield, I will recognize you and then we will go to Mr. Sawyer.

Mr. WHITFIELD. Thank you very much. I think all of us are impressed with the legislation in Texas. It seems almost unbelievable that you could get all of those varied groups to come together to pass this legislation.

In your legislation do you address the issue at all of renewable energy or are there some mandates relating to renewables? Could you tell me what those are?

Mr. BARTON. The recording secretary can't recognize a nod, Senator, so you have to verbally acknowledge.

Mr. SIBLEY. I will shake my head "yes" real hard and you can hear the rattle. Yes, we did. We got into that. What we tried to do was have some incentives, and I have got a copy of the bill. I can share that with you. But we did try to set aside a moving goal that is racheted up over a period of time, and we tried to help incentivize the renewables.

We think it is the direction we want to go because of environmental concerns. But I believe it is doable. Some people came in with some unrealistic goals that in my opinion, would have been impossible or would have been so, I guess economically inviable, that we rejected those.

So each person or each entity that is going to do business in the State of Texas has to meet those goals as far as generation using renewables. And they are able to trade credit. So I will yield to Representative Wolens who is on the beam here.

Mr. WOLENS. We did 1.65 percent of its capacity has to come from renewable sources, which is hydro, wind, and biomass. It is surprising that in West Texas we have got enough capacity from wind to supply twice the amount of energy in Texas and in the Texas legislature we have the capacity to provide a lot of wind, too. That goes from 1.65 percent up to 3 percent by the year 2009. I think this is compatible with what some other States have been doing, too.

Mr. WHITFIELD. But you do include hydro?

Mr. WOLENS. Yes, we do.

Mr. WHITFIELD. Okay.

Mr. WOLENS. Hydro, wind, biomass, and I think two others that I don't remember.

Mr. WHITFIELD. Okay. Now, I noticed that on the electric co-ops and the municipalities you allow them to opt in rather than giving them an option of opting out. Did you have to do that in order to get them to agree to this legislation, or was there some other reason?

Mr. SIBLEY. Yes. Politics at its rawest.

Mr. WHITFIELD. Now it is my understanding that there was some tie between environmental standards and stranded costs. Was there a tie between those two?

Mr. SIBLEY. Yes. In order to recover stranded costs they had to agree to do certain things with some, I would say, lignite-fired coal plants that were causing us some problems. And we have a number of sites in the Dallas/Fort Worth area, the Houston area, that are going to have problems with clean air, or the clean air abatement issues coming out of the EPA.

And so we thought, after talking with Governor Bush early one morning we decided that linking those two would be a way for those with environmental concerns to get part of what they wanted and for utilities to get part of what they wanted. So there's an incentive there for these utilities to clean up their act in regard to those plants. Representative Wolens took that idea, and I think perfected it actually; did a good job.

Mr. WOLENS. And then we did one other thing which is, we had a peculiar situation in Texas where some of our plants were grandfathered from being cleaned up. And I want to backtrack a little

bit on the market power issue where I said that we said that you can't have any more than 20 percent.

One company, Texas Utilities, was going to exceed the 20 percent, and so we said, clean up the dirty power plants by 1903 or 1905 and we will include that in the 20 percent. That is the only one where we wiggled a little bit from the 20 percent. So it affected the stranded cost issue which is, clean up the dirty power plants and we will pay for it. I mean, this ain't for free for anybody.

Clean up the dirty power plants, get rid of the filth before the Feds do something, the EPA does something, to close down industry in our urban areas. Clean them up and we will pay for it as part of the stranded costs which in turn get securitized.

And second, if you are going to get into the 20 percent on the market power so you don't exercise undue market power, clean up these dirty plants and won't include it in the 20 percent.

Mr. WHITFIELD. I see my time is up, Mr. Chairman, but I am assuming we do have a copy of their legislation, right?

Mr. BARTON. We can get you a copy. I don't think we have handed it out but we have access to it.

Mr. WHITFIELD. Okay. Thank you very much.

Mr. BARTON. Okay. We will let the record show that there are no dirty power plants in Texas. There are some that are less clean than others, and there is some incentive for the less-clean plants to become cleaner.

We recognize the gentleman from Ohio, Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman. Ohio just went through the exercise that Texas completed. We went in a profoundly different direction than you did and I just want to compliment you on the tenacity and the attention to detail that it took to achieve a piece of legislation. Whether I agree with everything in it or not it addresses in substance, an awful lot of authority questions that are a part of that.

Let me however, turn a little bit down to this end of the table. We have talked a great deal about what the current transmission system was put in place to do and the way in some parts of the country it has actually evolved slowly into a changing function.

But would you say in general, first of all, that the transmission system is largely designed to get from specific capacity to specific load, and that it has only incidently served in a broader, interactive function in wholesale markets in the current setting?

If that is in fact the case, as you nod your heads, my first question, the one I asked in my opening statement was, is there sufficient capacity in the transmission system to accommodate the kinds of concerns that I heard articulated in terms of the expenditure to get into sufficient generating capacity by 2010? Do we have the transmission capacity to meet those needs?

Mr. NUGENT. I think additions will have to be made to transmission and the standards for that are changing somewhat. It used to be that you determined the need for an additional unit of generation. You decided where that was and then you plugged that into the system and made amendments to the system to make sure it operated in a robust enough way.

Now you're in a situation where you're creating a number of competitors all of whom want to compete in the system, and you have

got to add additions or strengthen those transmission systems to accommodate that.

Mr. SAWYER. Others?

Mr. SVANDA. Michigan has a terribly constrained capacity for transmission. If you declared tomorrow that there was an open access, free marketplace in electricity around the country, Michigan can only import about 20 percent of the capacity required to serve our customers' needs. And we have factored that in for example, in a way that we would propose to deal with stranded costs.

Mr. SULLIVAN. And in the Southeast where we have a fairly large, integrated grid, it still holds true that the transmission systems were built to accommodate the individual companies as they were built and there are definitely constraints where the two systems would join.

Mr. SAWYER. Are today's pricing policies sufficient to evolve that grid efficiently to retain reliability and to attract the capital necessary to make that happen?

Mr. SULLIVAN. I think not. I think that there needs to be incentives placed on additional construction so that you'll get the investors to build the transmission systems that we are going to need to rid ourselves of those constraints.

Mr. SAWYER. Others?

Mr. NUGENT. I think it is an open question right now. We are still trying to figure out what is the appropriate way to deal with that. At least in New England.

Mr. BARTON. Will the gentleman yield on that?

Mr. SAWYER. Sure.

Mr. BARTON. For our Public Service Commissioners, is it possible in your opinion, to have a regulated transmission grid? We still use the standard regulatory model and have a deregulated transmission grid where there are no price controls? Kind of a dual transmission system if we are going to so to this market? Is that theoretically possible?

Mr. SVANDA. I believe that it is theoretically possible and I believe that we have even better than theory to prove it in the way that the physical highway system in this country currently exists.

We have in fact, the State highways that we travel on, municipal, our city streets that we travel on, we have interstate highway systems, and we have toll roads. And as long as there is equal and open access it doesn't matter just so long that as each of us entering or accessing that system are treated in the same way.

Mr. BARTON. Mr. Sullivan?

Mr. SULLIVAN. I think the answer to that is yes, if you will provide enough incentive for the investment to be made in those transmission systems.

Mr. BARTON. Okay. Mr. Nugent?

Mr. NUGENT. I don't see how you are going to get to a competitive transmission grid. I think what you are doing is, you may be able to find some segments connecting a particular generator to a node within the system that you may be able to leave in a deregulated fashion.

But the idea of establishing an extensive grid which it seems to me, is likely to need eminent domain in order to be able to complete all its links, would mean that it is probably not likely to hap-

pen. I think you are likely to have a single, integrated, and fully regulated transmission grid.

Mr. SIBLEY. If I could, I would like to agree with the gentleman from Maine. What you have is a toll road and that is the only way you can get wherever you want to get and then you are going to let them charge whatever they want to charge. So I would favor a regulated transmission system with somebody looking at it. Kind of a rate of return type regulation if you will.

Mr. SAWYER. It is exactly what—forgive me, but that is where I was trying to head to. I had a couple of other stops along the highway.

Mr. BARTON. Well, continue on. I took some of your time, sir.

Mr. SIBLEY. If I could also say, we had a 3-pronged test in Texas before we declared an area to be open, and one of them was, no transmission constraints. And it kind of feeds into the market power question as well.

Also on our transmission, we had a postage stamp rate which means, to enhance competition however much electricity they want to move down that transmission system, it's the same, you know, whether you moved it 100 miles or 20 miles.

Mr. SAWYER. Are you familiar with the FERC pricing policies today on transmission?

Mr. SIBLEY. I am not.

Mr. SAWYER. Could you comment on those for the purpose of where we are headed with conceivably, a flexible framework for a national transmission system, or regional transmission system?

Mr. SVANDA. Sure. And I think FERC has attempted to demonstrated that one size fits no one, in fact, because they have been confronted with a number of different proposals from different regions of the country in order to be responsive to how the industry has developed in different corners of the country to anticipate the cultural differences and economic differences and things like that; that they have tried to consider flexibility.

And so I think most of their work so far as been good but as I mentioned earlier, way too slow, and there are parts of the country that specifically asked for some leadership. And I think they are preferring right now to take a one-size-fits-all, let us develop something nationally type approach. And that doesn't work so well for us in the Midwest.

Mr. SAWYER. I am not entirely convinced that that is what they are doing, but I would agree with your conclusion, yes.

Mr. SULLIVAN. Mr. Sawyer, I think what we are seeing here is, the answer depends on which part of the country you are getting your answer from. And I think that is indicative of the point that we are all sort of trying to make. And that is that the States individually, can determine what is best for us as we go toward a new environment in electricity competition.

Mr. SAWYER. I generally agree with that. Transmission however, seems to pose a set of concerns that transcend individual jurisdictions and that may require that kind of flexible framework within which a Federal policy would need to be put in place.

Mr. NUGENT. We are trying to work that stuff out in New England. We are working on proper pricing patterns: should it be nodal, should it be zonal, should it be a combination of these? The

six New England Commissions meet regularly to try and determine what is the best public policy interest and to advance that idea to the FERC. We haven't finally resolved that question. The FERC has generally been supportive of the initiatives that we have proposed, however.

Mr. BARTON. We will have to let you come back to this question.

Mr. SAWYER. I will come back. Thank you, Mr.Chairman.

Mr. BARTON. The gentleman from North Carolina, Mr. Burr, is recognized for 5 minutes.

Mr. BURR. Thank you, Mr. Chairman. Mr. Wolens, let me ask you, Texas did have a stranded cost; they addressed stranded costs, am I correct?

Mr. WOLENS. Yes sir.

Mr. BURR. Tell me, was one of the considerations to the stranded cost plan, nuclear decommission?

Mr. WOLENS. Yes sir.

Mr. BURR. Tell me what part of that played a factor.

Mr. WOLENS. We had two different ways of evaluating how you get to stranded costs. And one issue, the larger issue as Senator Sibley said, is do you pay it and how much do you pay? And generally we said, we are going to pay it. It still remains to be quibbled what that means, and every State is going to quibble. Even if you say we are going to pay 100 percent of it, it is not clear what 100 percent means to any one particular State. And there is an enormous amount of devil in the detail.

Mr. BURR. Well, let me ask you one specific thing.

Mr. WOLENS. Go ahead.

Mr. BURR. Are the Texas utilities that hold nuclear generation fully funded in their decommission funds?

Mr. WOLENS. I believe so. Do you know the answer to that?

Mr. SIBLEY. Yes. I believe the answer is yes; they are fully funded.

Mr. BURR. They are fully funded?

Mr. WOLENS. And then what we did is, as Senator Sibley said, on stranded costs that are not nuclear we sent it out to the marketplace for the marketplace to put a value on it because we are not so smart that we can do it.

But you have got to send it out to the market in one way or another for the market to put a value on the stranded cost, except for nuclear. On nuclear there will be an administrative test.

Mr. BURR. Could I ask you to hold for a second? I ask the indulgence of the chair to yield to somebody else while I run for a vote.

Mr. BARTON. Okay. We are going to recognize the distinguished gentleman from Illinois, Mr. Rush, then.

Mr. RUSH. Thank you, Mr. Chairman. I want to commend you on this hearing and I want to thank the individuals who are testifying today for being here.

First of all, I would like to ask Mr. Sibley if you don't mind, and anybody else can join in on this, but Chairman Bliley indicated that he would no longer insist on a Federal mandate and a date certain for States to enter into competition.

And recognizing that many States have already begun the competitive process, is it your opinion that a date certain provision is

required, or should States be left to determine themselves when to enter into competition?

Mr. SIBLEY. I think the States ought to be left to determine on their own what date they enter, if at all. If they choose to stay out that wouldn't offend me at all either. This is a very complicated issue. The State of Texas chose January 1, 2002, but we took a lot of things into consideration in doing that.

How long will it take us to get an independent system operator? I think you all referred to it as an RTO. How long does it take to get stranded costs paid down enough to where you can make this without punishing the consumer? Getting computer systems to talk to each other so that you can have a reconciliation about how much electricity was put into the system, by whom, and how they get their money out.

So there are a lot of very complicated issues and it takes time. This is not like going out and building a Little League baseball field where we just get more people out there and we get it done quicker. There are some things that take time to come together.

So, every State I guess, finds themself in a different dilemma or different situation. California is moving ahead, Texas will be lagging; come 2002 we will be ready. Other States may be further behind than that.

So I wholeheartedly support the idea of each State making its own decision about when they're going to do it or in my opinion, even if they do it. If Alabama chooses to stay out I would support them in that.

Mr. RUSH. Well, is there anybody else on the panel who might have a differing position on this? Does everybody agree with this?

Mr. WOLENS. I have a concurring opinion, and I think that you look at the marketplace of politics and supply and demand, and I think that it will get there on its own because there will be a political, which is to say, a policy interest in driving down prices which will generally happen in competition, No. 1.

I think that States will experience a capacity problem and those that don't, don't, but there will be a lot that do and they will reach the policy decision that you can solve capacity issues with competition. And I think that No. 3, that because of mergers and acquisitions, the marketplace will politically and as a matter of policy, bring the issue home to those States so that you get to the same place which is, States will do it on their own.

Mr. SVANDA. I concur but would also like to add one comment and that is, in Michigan we certainly respect the other States who don't want to move at the same pace or maybe even in the same direction.

But it would be extremely helpful to the development of a true marketplace not to have in place a mandate telling all of the States that they have to move in a particular direction at a particular time, but a deadline by which each State needs to give this consideration and indicate to all the rest of us, which direction that State is headed, so that we can understand how they will or will not be a player in the marketplace.

Mr. SULLIVAN. Since I seem to be sort of out here by myself in the position that Alabama has taken, and I certainly don't infer that I'm smarter than all these other guys at the table, we just

have utility rates, electric rates, that are a lot lower than most other States. But I——

Mr. BARTON. What is the average homeowner cost per kilowatt hour for electricity?

Mr. SULLIVAN. It is under 6 cents.

Mr. BARTON. Okay, but 5.5, 5.9?

Mr. SULLIVAN. It just depends on how you figure the particular rate, but it is——

Mr. BARTON. But between 5 and 6 cents per kilowatt hour? And that is mostly coal generated I think, isn't that correct?

Mr. SULLIVAN. Yes, about 60 percent of our generation comes from coal, but we do have a good mix in Alabama. But the point is this: if we find that what other States are doing is going to bring our rates down even further, you can bet your boots that we are going to rush to try to emulate what those States are doing.

Mr. BARTON. I took some of your time, Congressman.

Mr. RUSH. Mr. Chairman, I have another question. Mr. Svanda, you indicated that Congress should take the lead in moving the country to a framework in which the competitive market can flourish. You also indicated that as we do so we should not protect special interests but instead, let the market function. Can you explain what do you mean by special interests and what are those special interests?

Mr. SVANDA. Sure. I did attempt to provide a couple of examples further in the text to include things like, a resource portfolio in the legislation I think would be better dealt with by the marketplace itself. And again, I provided a couple of additional examples of that, in both micro turbines and fuel cell technology.

And coming from Michigan we tend to keep an eye on what is going on in the automotive industry. We have companies making huge investments right now in perfecting fuel cell technology so that it can be utilized in automobiles. And I am confident with that kind of investment that if a fuel cell can bump along our public streets and highways that it is going to be a tremendously reliable, clean, efficient sort of connection for our homes or small businesses, or those kinds of applications.

And that is a marketplace-driven kind of investment right now. I would for one, hate to see the investment that is being made to perfect fuel cell technology be overridden artificially because some legislative or regulatory decision got made that moved some other technology ahead of fuel cell technology.

Mr. RUSH. Thank you, Mr. Chairman. I yield back.

Mr. BARTON. Thank you, Congressman Rush. I am going to recognize Congressman Burr again who has returned. Before I do that, I am going to ask that State Senator Sibley be excused. He and I have a luncheon engagement we were supposed to have been at 15 minutes ago. So I know the Honorable Mr. Wolens will more than capably take care of the interests of Texas in this debate. And I will certainly come back and if the panel is still empaneled, Mr. Sibley will come back——

Mr. SAWYER. Mr. Chairman, before the Senator goes, Senator, you had made some mention about responding to the four questions that I asked in my opening statement. I don't know whether or not you had the opportunity to do that. I was voting during some of

your comments. Would it be possible just to take a moment to summarize that?

Mr. BARTON. Sure. And then we will recognize Mr. Burr.

Mr. SAWYER. Thank you.

Mr. SIBLEY. As I had it down, you asked, should you honor State bills. I think my answer to that is yes. Transmission capacity, interstate, I think you do need to look at capacity because I do believe that given the arcane nature and who is controlling all this, that you need to have a market power test. I would encourage you to do that. I am not picking out a number for you. We picked 20 percent but you pick out what you think would work.

The role of FERC I think, is the role of the referee. I think you can be pivotal and I think it is crucial that you do get into transmission and that you make some decisions about whether or not there are transmission constraints, because that will affect these market power tests that you might want to put in.

So if somebody has 20 percent of the generating capacity in a certain area or in a TRANSCO, because of transmission constraints they may actually be 80 percent. So I do think it is critical that you do look at that.

And in the siting of new transmission, I think you ought to do that. Personally I don't see that as a competitive issue or a proprietary issue. I see that as a natural monopoly, just like the siting of a highway. And so I would encourage you to do that.

Mr. SAWYER. Thank you very much, Mr. Chairman. I appreciate your flexibility.

Mr. STEARNS [presiding]. I think Mr. Burr is entitled to finish his questioning. Mr. Burr is recognized.

Mr. BURR. I thank the Chair and I apologize to the witnesses, the challenges we are faced with to be in two places or three places at once. Let me go to Mr. Sullivan and right down the line and ask a similar question.

Did the rates in your States allow the decommissioned fund of nuclear facilities to be funded at an adequate amount as it relates to their decommissioning cost in the future, Mr. Sullivan?

Mr. SULLIVAN. In Alabama, we are pretty fortunate. We are not going to have very much stranded costs in our State. As a matter of fact, a couple of other years we won't have any stranded costs in Alabama. But when it comes to decommissioning, the funding that has been set aside is going to be adequate.

Our plans are not to be decommissioned any time soon. Sometime early in the next millennium we will start decommissioning unless the licenses are re-approved.

Mr. BURR. Mr. Svanda.

Mr. SVANDA. Well, generally speaking, the funds are adequate. We in fact, have a plant going through decommissioning right now, and generally speaking the funds set aside have been adequate.

Mr. BURR. Does Maine have any nuclear?

Mr. NUGENT. We certainly do.

Mr. BURR. I am glad to hear that.

Mr. NUGENT. Or, we did, and therein lies the problem. The fund was fully adequate until the plant failed to be able to perform adequately and it was decided to shut it down early. So for its usage up until that time it was fully funded. However, since it is closing

short of its projected date in 2008, that portion is unfunded and that part will be picked up: is being litigated, will be settled, it will be a number, it will go into stranded costs.

Mr. BURR. So should this committee be aware of the fact that as PUCs look at the decommissioning costs they did it over a period of time, lifespan of that generation facility and anything short of that lifespan would affect the decommissioning funds that they had to work from, or the sale of a nuclear facility might potentially affect the size of the fund, or the challenge of the sale? Would that be accurate?

Mr. SULLIVAN. Mr. Burr, all of those statements are accurate.

Mr. BURR. Okay, let me go to Michigan one more time because I happen to be a rate payer in Michigan and I am troubled when I hear that you are not supportive of reciprocity because that tells me that there are really no plans in Michigan to have a retail market that is open, therefore I have no choice as a ratepayer; not that I am not receiving the best service and the lowest price from my current power source.

But I think that clearly I think that reciprocity, believing that no date certain is important in legislation is a healthy incentive to make all States consider strongly, competition in their marketplace. Let me give you one more opportunity to make the case for why reciprocity is bad.

Mr. SVANDA. Well, I apologize for making the impression that I thought reciprocity was bad. I do not think it is a bad thing. In fact, that is something that we would encourage in Michigan. However, my comments were to the point that a State who chooses not to be in the competitive marketplace on behalf of its citizens, should not be in a position to restrict its companies from competing in our marketplace.

Mr. BURR. So where is the incentive for you to offer an open marketplace in your State?

Mr. SVANDA. It is an open marketplace that invites investment, invites access to be gained onto the transmission system to move power into the State.

Mr. BURR. But clearly, you don't allow outsiders to come in but you allow your investor-owned or co-ops or generating power to go out? You'd like to see it go out but nobody else come in, is that what you are saying?

Mr. SVANDA. Not at all. No, we in fact, invite investment, invite companies to utilize the transmission system to move power into Michigan. My statements are fully in the context of moving to an open marketplace and we don't want some potential competitor artificially restrained from providing service into our State.

Mr. BURR. I am not sure that I am clear on it but I will handle any clarification in writing, if that is okay with you.

Mr. SVANDA. Absolutely.

Mr. BURR. Let me go to you for one last question, Mr. Sullivan. Define market powers for me.

Mr. SULLIVAN. I think in the context in which it is being used in the restructuring of the electric industry, market power simply means that there would be an excess of control over the power in any given market by one company. And of course, which speaks to reciprocity as well.

Mr. BURR. Does market power exist today anywhere?

Mr. SULLIVAN. Well, I think market power exists in every certificated area where monopolies are still in existence throughout the United States.

Mr. BURR. So monopolies allow market power to exist?

Mr. SULLIVAN. I think monopolies are market power, per se.

Mr. BURR. Okay. I thank you and I thank the panel.

Mr. STEARNS. I thank the gentleman. The next one in order is Mr. Bryant of Tennessee, in order of appearance. Mr. Bryant, are you ready?

Mr. BURR. He is not ready.

Mr. STEARNS. Mr. Largent from Oklahoma is recognized for 5 minutes.

Mr. LARGENT. Thank you, Mr. Chairman. Mr. Sullivan, I wanted to ask you some questions. You made some pretty strong statements against competition in Alabama. Why should the consumers in Alabama not have a choice?

Mr. SULLIVAN. Mr. Largent, I think it depends on what your goal is. If your goal is choice, they should have choice; if your goal is the lowest possible price and the highest possible quality of service, then I think you ought to do whatever you need to do in order to assure that that is the goal that you reach.

Mr. LARGENT. And so you are saying that if you give consumers choice that reliability would suffer?

Mr. SULLIVAN. I am saying this. I am saying that we have learned through some of the other States that have already preceded us to go into a competitive market, that transitioning from regulation to competition is not a free ride.

For instance, in California we have learned that putting in their ISO out there cost $300 million to establish and that there is going to be a pretty high cost to maintain and operate that ISO on an annual basis.

Now, our rates in Alabama again, are 17 and 19 percent below the national average. And we know that if we put in the mechanisms to offer retail customers and Alabama customer choice there is going to be some cost to that. Those costs in Alabama may be higher than the benefits to be derived at this point in time.

In other States where the cost would be the same but the rates are higher, then the benefits could easily outweigh the costs in those States. And that is why I am saying that we have to look at this whole process of transitioning from regulation to competition on a State-by-State basis.

Mr. LARGENT. One of the things that you said was that reliability would be jeopardized.

Mr. SULLIVAN. I think it will be. Because I think when there is no obligation to serve, or conversely, there is no market assured, that you are going to find that there is going to be a reluctance for generators to come in and invest in a given market until perhaps they are assured that there will be some market there that would allow them a reasonable return on their investment.

The problem is that there is, in a lot ways, maybe up to a 2-year lag from the time a plan is constructed till the time it comes online. So I think that you get into a situation where your reserves

could fall below that magic 10 percent that my friends from Texas were talking about earlier.

Mr. LARGENT. Give me an example of a market that a generator would be reluctant to serve in.

Mr. SULLIVAN. I can't answer that question. I can just tell you that in Alabama they would have to come in and acquire property at some cost. Which for instance, Alabama Power Company already owns; it would not have to acquire.

And we have seen this in the last case that if we certificated additional power in Alabama, that it was hard for other companies to come in and compete and put in generation in Alabama as cheaply as the incumbent company could do it.

Mr. LARGENT. Why was that?

Mr. SULLIVAN. It is because the incumbent company already owned the land on which the generating facility was going to be built, and so there was a cost there that the others would have had to have incurred that the incumbent didn't have to incur.

Mr. LARGENT. It didn't have anything to do with the special relationship that the incumbent utilities had with the State PUC?

Mr. SULLIVAN. I don't understand that question.

Mr. LARGENT. Well I mean, there is definitely a relationship, long-standing relationship, between your incumbent utilities in the State of Alabama and with the State PUC that grants the siting abilities for new generation to be built. And we have seen those problems in a lot of States, not just Alabama. So that there is not only a problem in getting approval for new generation, but then it also creates a lot of other problems.

Mr. SULLIVAN. No sir. What we looked at in this particular case, were the numbers. And obviously, it was going to cost more to come in and acquire the property, build the plant, than it would to just build the plant on property that was already acquired. And I don't think there is any more of a special relationship between the Alabama Public Service Commission and the utilities that we regulate than there would be between—well, let me just leave it at that. There is not.

Mr. LARGENT. There have been numerous panels that we have heard from on the issue of deregulation. To my knowledge, you are the first to testify that they felt like reliability would actually suffer as a result of deregulation; which I found your statements were interesting.

I also wanted to ask Mr. Wolens, you dealt with and hit pretty strongly the issue of adequacy of generation. I wanted to ask you this question and that was, do you feel like that as we move into a world of competition that the generation adequacy would improve or not?

Mr. WOLENS. Absolutely. The market will call for it and it will come, because we have to have it. And we have to have it for health reasons, we have to have it for safety reasons. And it is just like goods and it is just like clothing. And you and us in State government, and people in city councils, governmental officials who get elected are never, ever going to put reliability at issue. It ain't going to happen.

And part of our concern is, what do we do about reliability? We were concerned that if go messing around with something and we

louse it up, that you are going to have every constituent in the world calling you at home and telling you that the lights are flickering.

So we can't louse this up at all and reliability is a huge issue and it is going to become an issue if you do nothing. Now, where I disagree, I disagree with very much of what this gentleman says from a substantive point of view. It makes me wonder what it is going to hurt by permitted dereg? If no one comes to invade his State to offer lower prices, then they don't come. It doesn't hurt anything.

But procedurally, if he doesn't want it, if the State doesn't want it, the State doesn't get it. But I go back. I believe that the marketplace of politics and the marketplace of public opinion and especially public policy, at some point brings deregulation there, because you are going to need it on generation at some point, you are going to need it on rates at some point, and you are going to need it on mergers and acquisitions at some point.

Mr. LARGENT. Yes. Well, I couldn't agree more with your remarks, and in fact, that is what I was going to say to Mr. Sullivan. Is that most of the proposals, and right now I would suspect all of the proposals that would be coming forward from the Federal Government, would allow the State of Alabama to opt out of any competition if they showed that there was a particular class of consumer that would be ill-affected by competition.

So it clearly gives the States the ability to opt-out. Or if a State has already moved like Texas, they get to basically, grandfather in all the language that the State of Texas does. So it really is handling this issue of State power versus Federal power with kid gloves in giving deference to the States at every turn.

My last question—I know I see my time is up—is back to you, Mr. Sullivan. I guess the only point that I would want to make is that not all low-cost States like the State of Alabama, share your view. There have been a number of States that are low-cost States.

Texas would be a low-cost State—Oklahoma, Arkansas would be low-cost States—have already moved electricity restructuring in their States, alone. Do you have an explanation for that, or a rationale?

Mr. SULLIVAN. Well, not living in those States, no sir, I don't have a definitive explanation, but I can tell you what I think. If we move continuously into restructuring the way that we started, a lot of that impetus has been provided by the technological advantages that have been given through generation with combined cycle gas turbines.

And those three States that you happened to mention are all States that fuel combined cycle gas turbines with their petroleum products. And I can see a definite advantage to Oklahoma and to Texas and to Arkansas if we are generating more electricity with natural gas.

And it seems to me that those States would be trying to do everything that they could for their individual economies to sell more natural gas if they could provide more generation capacity through combined cycle gas turbines.

Mr. STEARNS. The gentleman's time has expired. The gentleman from Texas, the ranking member, Mr. Hall is recognized for 5 minutes.

Mr. HALL. Thank you, Mr. Chairman. I guess my first question really ought to be to Mr. Wolens. The three beautiful women that you've consulted a time or so there, are they members of your staff?

Mr. WOLENS. The older of the women is the speaker of my house.

Mr. HALL. Which one is that?

Mr. WOLENS. It is my wife who I am proud to tell you has entered the family business and has run for public office and is member of the Dallas City Council; my wife, Lauramela.

Mr. HALL. I am very well aware of that.

Mr. WOLENS. And then our two daughters, Alex and Lilly.

Mr. HALL. President and vice president; it is a question about which will be.

Mr. WOLENS. But I pay attention to the speaker of the house.

Mr. HALL. I believe you, and you show good judgment. She is one of the youngest and most articulate and most active members of any of the Nation's larger metropolitan area councils, and we thank you for the time you give and for the encouragement you give to Steve.

We talked here and I really have been out and I don't know what questions have been asked, but just I have a general question on what we ought to do at the Federal level. We all want to know that and we want to know what is really best to do, the way we get it is what we get from that table there, from people that are smarter than we are, that have gone through situations that are similar to ours or that they have some particular knowledge. And then we put it all together and try to write a bill from it.

I guess my question would be to you and to each of you, the odds are a little better than that—I've got one Texan and three others there—what are the problems that need to be fixed at the Federal level to facilitate whatever course of action your State has taken? And Jim, I don't believe your State has acted yet. Do you like the Texas bill?

Mr. SULLIVAN. I have not read the Texas legislation but from what I understand about it I think it's a definite step in the right direction. And fortunately, I'm going to have the benefit of waiting and seeing how that bill affects Texas and then respond and react to that.

Mr. HALL. Well, I think Texas did that with the California bill and other bills. We have benefited by the bills that have already passed and some of the trial and errors there. Has the State of Maine or Michigan, have they acted? Do you have a bill from your legislatures?

Mr. NUGENT. I will let Dave speak to Michigan although I once served as public servant in Michigan. Maine actually passed the law first, then handed it to the Commission to develop implementing rules.

With regard to what the Federal Government might do here, one thing I think ought to be given serious considering is encouraging the FERC to establish joint boards with the State and Federal regulators that would cover the same areas as the independent system operators, so as to craft the best regulations for that particular region.

Mr. SVANDA. Michigan does not currently have legislation on the books, and I noted while you were out of the room that our efforts

to move through the Public Service Commission have been derailed somewhat. Just this week on Tuesday our Supreme Court ruled on a very narrow issue that we could not do some of the things that we have been doing.

And so that puts into question where we stand in our move to a competitive marketplace. We are a competitive or competition-driven State and are moving as hard and fast as we can in that direction. Our legislature has been involved in other issues like cutting taxes and things like that.

They have certainly been aware of what we have been doing and I know members of the committee, or at least members in our legislature, have ways of signaling us if we are not doing things in a manner that is consistent with their viewpoints, and we have not been receiving those signals.

So we were moving as quickly as we could without that. Now we are kind of back to a restarting juncture and we will figure it out from here again.

Mr. HALL. Well, with yours in abeyance and Mr. Sullivan's State has not acted, Mr. Nugent, you all have acted but you are going to go out and come in again, is that what I understand?

Mr. NUGENT. Go out and come in again, it is for legislation?

Mr. HALL. Yes.

Mr. NUGENT. We have a very extensive and comprehensive restructuring law, and it puts us on target to start next March 1.

Mr. HALL. My question then would be directed to you and to Mr. Wolens, then. How can we facilitate the course of action that your State has taken, or to be more Texan with it, how can we screw it up?

Mr. NUGENT. Maine's point of view is markedly different from Texas'; not necessarily in the end result. But we are a very small piece. We are not large enough to create our own market. We have to develop or depend on a region-wide market developing throughout New England and perhaps even more broadly, into adjacent parts of Canada and New York.

We work cooperatively with the other Commissions in the Northeast, especially in New England, and it would be helpful to us, I think, if we had as I say, the joint Boards established with some FERC and State Commission members to develop policy with regard to transmission systems that would support a robust market across all of New England. Ultimately to be decided on by the FERC but at least the solution developed by a joint Board.

Mr. HALL. Mr. Chairman, can I have another 30 seconds for Mr. Wolens?

Mr. STEARNS. With unanimous consent, so ordered.

Mr. HALL. Go ahead, Steve.

Mr. WOLENS. I have studied this for 3 years and I have got hundreds of hours in this issue, and I would beseech you and Congress to do something that your States can't do because we don't have the power to do it. And it deals with those areas, those power regions that serve multiple States.

No. 1, please help us solve transmission issues between States, and those are the soda straw issues. No. 2, help us in those States where we can't control the independent systems operator. And in those power regions that just haven't developed an ISO, help us in

those power regions that have not developed tariffs of their own because we can't do it in Texas, especially for those three other power regions that affect us.

And finally, help us in those same areas where market power is an issue; that is the issue of a company that exercises undue influence in the market. It was Congressman Burr that wanted to know how to define market power, and heck if I know. Because if we knew you could cut the size of the FTC in half.

FTC figures out with the Courts that Coca Cola can have 85 percent of the market and there is no market power; that Lay's Potato Chips can have 76 percent of the market, or Gillette with their Sensor Razor can have 87 percent of the market and that is not the exercise of undue market power.

And we come back to Texas and say if it is over 20 it is too much. But I can't influence it and we in the States can't influence what happens in other power regions that we don't have jurisdiction over and you have the jurisdiction over, and please help us.

Mr. HALL. Mr. Chairman, I am done. And I, after thanking Mr. Wolens once again and Dave Sibley for ushering that bill through and our good Governor for signing it, just like I hope he is going to be signing bills up here for the next 4 years. I yield back my time.

Mr. STEARNS. I thank the gentleman. I will take my 5 minutes at this moment.

Mr. Sullivan, I asked the staff to go back to see what your residential rates are, the range of them, because I thought it would be interesting. We show that your low is 5.2 cents and your high is 9.69. So it appears to me that with that kind of range—that is for residential—a lot of people in the residential are paying a pretty stiff rate here.

Mr. SULLIVAN. I would imagine that some of those rates are reflective of the co-ops Muni systems that are doing business in Alabama. In Alabama we do have an anomaly that most other States don't have. Most States have their own co-ops and municipal systems.

In Alabama, the northern third geographic of our State is TVA territory, so we have not only IOUs and co-ops and Muni systems, we also have a dominance of TVA in the northern part of our State.

Mr. STEARNS. Let me ask you this. Do you folks feel FERC is headed in the right direction? You know, they recently issued a Notice of Proposed Rulemaking on Regional Transmission Organizations. Maybe just quickly just go down and ask if you feel FERC is headed in the right direction. Representative Wolens?

Mr. WOLENS. Congressman, I am not qualified to comment on that.

Mr. STEARNS. Okay. Mr. Sullivan?

Mr. SULLIVAN. In my judgment, FERC is headed in the right direction. Where I may differ from some of my other colleagues is, I would like them to take it a little bit slower rather than faster.

Mr. STEARNS. Okay.

Mr. NUGENT. I guess I do represent just the opposite opinion in that I think FERC is moving too slowly. I think that they have opportunities to recognize the regional differences that exist in this

country and to allow for those regional differences to work in an overall system.

But they have had, for example in the Midwest, they had 6 or 7 States step forward and say, we are interested in your leadership in creating a functional marketplace in our territory. We are interested in your leadership and guidance in creating an ISO.

And we also indicated that we were giving them an opportunity to not create a one-size-fits-all solution around the country but to work with us individually. And they didn't exercise that opportunity that was given to them by Midwestern States. And so I think they're moving too slowly.

Mr. STEARNS. Okay.

Mr. NUGENT. I think the cooperative approach or the voluntary approach that they have suggested is appropriate at this point. You should know that the regulators in New England, New York, and Pennsylvania, New Jersey, Maryland, PJM, have organized a conference with FERC cooperating with us, this October to look at how we can advance that whole thing.

I would hate to see a very large transmission organization established which would give us some difficulty in just trying to wrap ourselves around it. We have worked hard to establish one in New England. I think that is far enough. I would hate to see it pushed to go more broadly, but are willing to discuss the issue.

Mr. STEARNS. This seems to me a key area, this transmission area. Should we on the Federal side, help FERC? Should we be involved with giving them more responsibility in this area of the transmission lines? Yes or no? Just coming down.

Mr. NUGENT. I think it is possible that they may need some additional authority perhaps paralleling what they have in the gas area, which has been a more competitive field than electricity has. Deregulation is ahead of the curve there. But it ought to be done in close cooperation with the States.

Mr. STEARNS. You don't think it could be done just through a market situation? The FERC needs to step in?

Mr. NUGENT. I think transmission will continue to be a single transmission grid, and because it is in a monopoly position it will continue to have to be regulated and therefore will need State and Federal regulators.

Mr. STEARNS. Does anyone disagree with that? No, you all agree with that?

Mr. SULLIVAN. I would just to that, that again, you have in TVA and the PMAs, you have some anomalies there and you are going to have to incorporate that into whatever you do as far as transmission is concerned. Because FERC does not have jurisdiction over that.

Mr. STEARNS. Just going to Representative Wolens, your testimony earlier. I have to admire you folks because in a sense what you did put in is price controls and you took the utilities and broke them out, and you got the support of the utilities to do that, as I understand what you are telling me.

Mr. WOLENS. Correct.

Mr. STEARNS. And the incentive was that once it was over that they would be able to compete and have a larger market share.

And when you approached them initially, were they receptive to that idea?

Mr. WOLENS. Well, I should tell you that in January 1997 when this idea came upon us—it came upon us in the 1993 session, 1995 session. The Texas legislature meets for 5 months at the beginning of every odd-numbered year. So we studied it in 1993, 1995, 1997. The utilities came to us and said, please do nothing.

Mr. STEARNS. Right. They didn't want controls to be broken up, obviously.

Mr. WOLENS. By May they said please do everything; please do something.

Mr. STEARNS. And what caused that?

Mr. WOLENS. Specifically, I believe it was an adverse ruling before the Public Utility Commission for a particular investor-owned utility, and the investor-owned utilities were concerned about how the Public Utility Commission was going to exert influence over prices.

Mr. HALL. Will the gentleman yield?

Mr. STEARNS. Sure; gladly.

Mr. HALL. You know, we had an awful lot of them who, on the first day said, let us do everything, do it tomorrow; came later saying, hey hold up, too. So that is the reason that we are so proud of our legislature and Maine that has already acted, acted timely.

They vacillated. At one time, one group was over here and the other group over here, and then the next time we talked to them they would be here and then the next time here.

And that is the reason I think that Chairman Bliley and Chairman Barton have shown good judgment in getting all the testimony we could have, pulling in everyone that we could get information from, not rushing to judgment, and trying to get a business decision rather than a Congressional guess. And I thank you. I yield back my time.

Mr. STEARNS. I thank the gentleman and my time is expired. I will ask the gentleman from Tennessee, Mr. Bryant, is recognized for 5 minutes.

Mr. BRYANT. Thank you, and again, I thank the very distinguished panel for their testimony. Mr. Wolens on the end from Texas, I guess my first question has to be, in relation to Tennessee, where is Texas?

Mr. WOLENS. It is to the left, it is to the North, and it is all around you.

Mr. BRYANT. Good. Thank you. In the restructuring scheme that Texas has come up with, how do you protect the issues that would relate to rural areas? How did you get those areas on board? What assurances do they have, particularly in terms of reliability and a competitive price? How did you bring them into the fold?

Mr. WOLENS. You know, many of our rural areas are served by co-ops. In Texas we have 85 consumer-owned cooperatives, ten of which do generation and transmission. And we treated the co-ops as we did the municipally owned utilities and said that when you folks want to come into the new world, you will let us know.

So we let the Boards of the co-ops and of the Munis make their decision when they come in, and they will decide when they come in.

Mr. BRYANT. Are there any standards? I know my colleague from Oklahoma mentioned at a State level there are provisions in some of our proposed bills that would allow them to opt out, you know, if they had a certain group of customers and so forth. But within the State of Texas there is no standard? It is just if they want in or out?

Mr. WOLENS. No, it is whether they want in. They are out until they want in, and we gave them even more control over their service area than we do under the status quo. There is less regulation by the Public Utility Commission.

There will be some oversight on the reliability issue but there will be very, very little; with the idea, the notion being, that they are investor-owned electricity companies, and if they decide to go in a different direction, then they decide to do it because they own it.

Mr. BRYANT. Mr. Sullivan, I tend to agree with a lot of your comments in terms of, I notice I have quit calling this a deregulation bill because I have a feeling it is going to be involving a lot more regulation and talk more about restructuring.

But you mentioned the subject of TVA, and I would solicit your comments on a Federal restructuring bill. What would you, in terms of your relationship with TVA and its relationship with the northern one-third of the State, how would you like to see TVA treated in a Federal bill?

Mr. SULLIVAN. I think TVA points out pretty well what I am trying to say about this whole issue of restructuring and that is, the answer for restructuring is not just to say no. The answer is, let's transcend from regulation to competition, but in the interim, as we have seen in all the legislation that has been passed in all the States, there is going to be sort of an artificial market established.

And during that time we are going to need to be very careful because if we give up too much regulation and the market is not yet fully enforced, then there are some dangers there. There are some caveats that must be mentioned.

At this point in time I have heard no State or Federal solutions to the problem of how we are going to handle TVA and Bonneville. And the point that I am trying to make is that we need to go slow on some of these issues until we can come up with these answers.

I don't have an answer but my answer is, we need to establish a dialog between or among TVA and the other surrounding States so that we can do what is fair to all the States, do what is fair for TVA and the IOUs that interface with TVA.

And the same thing is true for the Northwest and the Bonneville area and the other PMAs. The point is, there are some areas of the country in which we just need to slow down and make sure that we are doing what is right and fair for those regions.

Mr. BRYANT. Follow-up to my colleague from Florida's question about transmission lines, is there any disagreement among the four of you that as far as the interstate lines go, that basically they should be subject to the same set of rules? There needs to be some consistent regulation? Mr. Sullivan?

Mr. SULLIVAN. I think it is critically important, and I think FERC has already addressed that in their Rules 888 and 889. But

I think it is critically important that we do have open and equal access as we transcend into retail competition.

Mr. BRYANT. Thank you. Thank you, Mr. Chairman.

Mr. STEARNS. I thank the gentleman. We have Mr. Pickering from Mississippi is recognized for 5 minutes.

Mr. PICKERING. Thank you, Mr. Chairman. Mr. Sullivan, coming from Mississippi, very similar to Alabama and very similar with the power, the fuel mix, the demographics in many ways, and knowing that we had a strategic advantage that has helped us attract a large number of jobs from Mercedes in Alabama to other manufacturing; because we do have a low-cost region. And so my intent and objective is to make sure that we have the strategic flexibility to maintain that strategic advantage.

But let me ask you from the most recent announcement by the chairman of this committee, Chairman Bliley, in which he announced that we would be going forward but without a Federal mandate of a date certain, or in essence, something that would give States flexibility, if we go forward on that basis and we address the critical issue of reliability and the provisions that are being proposed now have broad consensus among States and the other shareholders, stakeholders in a reliable network—if we address the issue of transmission, if we acknowledge the State's rights and authority in addressing stranded costs, if we make sure for rural areas that there is a universal service requirement—if we do a bill of that nature, is that something that you can support?

Mr. SULLIVAN. I have never been against any bill that would allow competition to evolve and allow it to become effective appropriately. And from what you have described it is my understanding that that is what you would be trying to accomplish. So the answer would be yes.

Mr. PICKERING. Thank you very much, Mr. Sullivan. Mr. Nugent, let me go back to some of the questions that you were having with Mr. Largent on reciprocity. And I want to try to get a better understanding, because as well as with transmission, reciprocity is going to be a difficult issue to address in this debate.

Now, you were saying that if your State chose not to have retail—okay, excuse me, I am sorry. It should be Mr. Svanda from Michigan. I apologize. Thank you for your correction.

But as far as reciprocity, if a State did not go to retail market or retail choice, but you would still support that State being able to allow investment and generation and open up their transmission system to distribute and deliver power outside of the State. Is that my understanding of your position?

Mr. SVANDA. That is correct, and especially so that they could be a competitor in the State of Michigan.

Mr. PICKERING. But not a competitor at the retail level? A competitor in the generation and a competitor at the wholesale or in the distribution of transmission, but not in the real market, is that——

Mr. SVANDA. No, a competitor at both wholesale and resale so that electricity generated in another State, even though it had not opened up the marketplace to its own residence and own businesses, that generation could in fact, become a viable competitor within Michigan.

Mr. PICKERING. Within Michigan. But what if Michigan did not open its market with your own people to be able to come into your State, invest in generation? Will outside of the State but not give reciprocal access to your market?

Mr. SVANDA. No, I do not think that would be fair, but my comments and the point that I have been trying to make is that what I laid out is from the perspective of an open Michigan marketplace. It is not from the perspective of a——

Mr. PICKERING. A closed——

Mr. SVANDA. [continuing] government protected current situation.

Mr. PICKERING. Thank you very much and I look forward—we do want to maintain the maximum flexibility for States to move forward. We are learning from the models such as Texas and other States that have moved forward. It does help and instruct and direct and guide us in the work that we are now facing.

And so I appreciate this panel, I appreciate your all's perspectives and the chairman's leadership on this issue and look forward to working each of you as you go forward.

Mr. SAWYER. Before the gentleman yields back, would you yield for just a moment?

Mr. PICKERING. Yes.

Mr. SAWYER. Do you mind my mentioning the subject that we talked about earlier today?

Mr. PICKERING. No, not at all.

Mr. SAWYER. I am going to have to forego my round of questions, but within the last 24 hours both Mr. Pickering and I have been subject to some fairly intensive lobbying over radio and directed telephone calls from a group called Citizens for State Power; presumably speaking on behalf of State's rights to determine their own future.

They have been calling into my district, cold-calling customers and saying, do you want your electric bill to have to subsidize electric utilities in Seattle? And if you don't would you like us to transfer your call to your Congressional office?

Let me just go on record here on behalf of both Mr. Pickering, who I suspect is being subjected to exactly the same kind of thing——

Mr. PICKERING. I am not sure if it has hit. It is planned; I am not sure if it has hit yet.

Mr. SAWYER. Anybody is free to say anything they want and to the politics. We are all big kids and we can deal with that. But that is so misleading of the issues at stake in this very serious argument, that I think it really does a disservice even to the very issues that they seek to advocate for.

And I wanted to get that on the record and I really appreciate the gentleman's flexibility in allowing me the time to do it.

Mr. PICKERING. Thank you, Mr. Sawyer, and——

Mr. HALL. Where can I have them call if they don't call you?

Mr. SAWYER. Pardon me?

Mr. HALL. Where can I have them call if they don't call you? I will retract that.

Mr. SAWYER. The gentleman from Texas I know, would give them accurate information before he undertook such a thing.

Mr. BARTON. Well, I am on the Oversight Investigation Subcommittee and we have jurisdiction over telecommunications, and if the gentleman wishes to pursue it a little more seriously, there are avenues that can be pursued in a bipartisan fashion.

Mr. SAWYER. If they keep this up and don't even come in and have the decency to come and talk to us before they undertake this sort of thing, I think that would make some sense.

Mr. BARTON. Okay. Are there any other members present who wish to ask questions of our first panel? If not, gentlemen, I want to thank you for your courtesy in attending and testifying at great length. And we will keep the record open for a number of days; perhaps a small number of weeks.

There may be other questions for the record that we will ask you, and if you do get such questions we would ask that you reply as quickly as possible because we hope to put a bill together and move to a mark-up sometime in mid-to late-July. So thank you for your testimony and you are now excused.

We would now like to have our second panel come forward, if I can get to the second page on my list here.

We have a group of local officials and co-ops. Welcome gentleman. We have with us now on our second panel, the Honorable Preston Bass who is the Mayor of Stantonsburg, North Carolina. We have Mr. Gene Argo who is the President and General Manager of Midwest Energy in Hays, Kansas. We have Mr. Gregory Wortham who is the Chief Operating Officer of 1st Rochdale, a cooperative of New York City in New York. We have Mr. Larry Watson who is the General Manager and CEO of City Light and Water of Paragould, Arkansas. And we have Mr. John Tiencken?

Mr. TIENCKEN. That's very good. Yes.

Mr. BARTON. Mr. John Tiencken who is the Executive Vice President and Chief Legal Officer for the South Carolina Public Service Authority.

Gentlemen, welcome all of you. Your statements are in the record in their entirety. We are going to start with Mayor Bass. We will give each of you 7 minutes to expound on that, and hopefully then we can have some questions. So Mr. Bass, welcome to the subcommittee and you are recognized to speak.

STATEMENTS OF HON. PRESTON BASS, MAYOR, CITY OF STANTONSBURG, NORTH CAROLINA; GENE ARGO, PRESIDENT AND GENERAL MANAGER, MIDWEST ENERGY; GREGORY L. WORTHAM, CHIEF OPERATING OFFICER, 1ST ROCHDALE COOPERATIVE; LARRY WATSON, GENERAL MANAGER, PARAGOULD LIGHT AND WATER COMMISSION; AND JOHN H. TIENCKEN, JR., EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

Mr. BASS. Thank you. Mr. Chairman and members——

Mr. BARTON. You really need to put that microphone close to you, Mayor, and speak very forcefully into it.

Mr. BASS. Mr. Chairman, members of the subcommittee, on behalf of the North Carolina towns of Lucama, Black Creek, Stantonsburg, and Sharpsburg, thank you for this opportunity to tell you of the wonderful changes that have recently come to our towns.

As the Mayor of Stantonsburg I witnessed these developments firsthand and am proud that our citizens have benefited from them. Our road to lower cost power began in 1995 when the towns of Black Creek, Stantonsburg and Lucama aggregated our electric loads and searched for a better deal, a supplier who could generate our electricity at a less expensive rate.

We were able to shop the market because of the Energy Policy Act of 1992; a Federal law which allowed wholesale customers such as these three towns, to shop the open power markets and obtain lower cost power supplies. We are thankful for the actions of current and former Congressmen and Congresswomen that voted to enact this bill.

Mr. BARTON. Mayor, could you cease? We are going to have a 15-minute vote on the Rule on the Banking Bill. Since you have just started, would you all like to take a lunch break?

Mr. BASS. Fine with me.

Mr. BARTON. And then what we will do is, we will come back. It is one o'clock. Let us come back at 1:45 and I don't care if the audience doesn't come back, but I want the panel back here at 1:45. And we will just start over with the Mayor and get this all wrapped up.

Because you all have been patient all morning and I have got to go sneak off and eat lunch. And there is a cafeteria here in the Rayburn down in the basement, or you can walk across the street. Just go straight in across the street and there is a cafeteria in Longworth right on the ground floor.

So we are recessed until 1:45.

[Brief recess.]

Mr. BARTON. The subcommittee will come to order. We have our panel back present and Congressman Burr is in the Annex and I am hopeful that Mr. Sawyer and Mr. Hall may be on their way. So we are going to reconvene.

Mayor Bass, you had been recognized so we will just restart the clock and you can either start all over or start where you had interrupted your testimony.

Mr. BASS. Okay, Mr. Chairman. I think I will just start over then, if it is all right with you.

Mr. BARTON. That is fine.

Mr. BASS. On behalf of the North Carolina towns of Lucama, Black Creek, Stantonsburg, and Sharpsburg, I thank you for this opportunity to tell you of the wonderful changes that have recently come to our towns.

As the Mayor of Stantonsburg I witnessed these developments firsthand and am proud that our citizens have benefited from them. Our road to lower cost power began in 1995 when the three towns of Black Creek, Stantonsburg and Lucama aggregated our electric loads and searched for a better deal, a supplier who could generate our electricity at a less expensive rate.

We were able to shop the market because of the Energy Policy Act of 1992; a Federal law which allowed wholesale customers such as these three towns, to shop the open power markets and obtain lower cost power supplies. We are thankful for the actions of current and former Congressmen and Congresswomen that voted to enact this bill.

In May 1996, town representatives appeared before the U.S. House of Representatives Committee on Commerce, Subcommittee on Energy and Power, to discuss our ongoing wholesale power project. Three years later we are back and are proud to announce that we successfully completed our project and cut our wholesale electric costs in half.

We are also happy to announce that another nearby town has now also successfully completed a wholesale power project. Earlier this year the town of Sharpsburg, North Carolina, shopped for a supplier with a better rate and cut its power costs by roughly 40 percent.

Three years ago our towns had some of the highest electric rates in the country. Typical residential electric rates were in the range of 11 to 12 cents per kilowatt hour. Now each town has cut its retail electric rates at least 25 percent, and growth is returning to the towns.

In Sharpsburg, where the lower cost wholesale power has been available for only 6 months, the town has already cut rates 12 percent and is currently examining further rate cuts. Examples of economic growth and improvements in citizen's quality of life through the lower electric rates abound in each town.

In Black Creek an electrical contractor employing approximately 35 people recently relocated to the town, due in part to the lower electric rates. A developer attracted by lower electric rates is now constructing a large, new subdivision in the town.

In Lucama, many residents are senior citizens and are often forced to live primarily on social security checks. The rate cut has meant huge savings and now senior citizens are no longer sitting in the summer heat, afraid to turn on the air conditioning for fear of high electric bills that they cannot afford to pay.

Furthermore, the town may not yet be done cutting retail rates. Later this summer the Board will examine the possibility of cutting their rates even further. In my town of Stantonsburg, new home applications are on the rise: from six per year before the power project to 25 applications since the project was completed.

Due to the completion of this wholesale power project the Town Board has cut residential rates approximately 33 percent, which translates into annual savings of $499 for the typical residential consumer.

In Sharpsburg, the largest subdivision in the town's history is now being constructed. The subdivision is over 100 acres and will be home to approximately 200 families.

The 12 percent rate cut that the Town Board approved in early 1999 lowered residential rates to roughly 8 cents per kilowatt hour. The further rate cuts that are anticipated will lower the town's residential rates to some of the lowest in the Southeast, and perhaps the country.

The towns of Black Creek, Lucama, Stantonsburg, and Sharpsburg are fortunate that we were able to reduce energy costs to our citizens. Other towns in North Carolina are not as fortunate since North Carolinians' electric suppliers are regulated by the State and these citizens must wait for passage of retail customer choice legislation before they can cut their rates.

Contrary to what you might have heard through your other sources, North Carolina is not a low-cost State. Our State's average adjustable cost is higher than the national average. And our average residential cost is the second highest in the Southeast.

Jobs are being lost in our State specifically due to high electric rates. We know from experience that the State's electric industry must be changed. Our towns will be ready for electric retail competition when it finally arrives in our State. We began our preparation by entering into relative short-term, wholesale power supply contracts which will free us to offer customer's choice to our citizens about the same time as it may become available in others with our State.

Then we will examine which alternatives will give our citizens lower electric rates. It does not matter to us whether we buy the electricity for our citizens or they purchase it themselves. Our primary concern is that our citizens obtain the lowest cost and most reliable electricity available.

Also in preparation of retail customer choice of electricity all four towns are now upgrading their individual electric systems to improve system reliability. For the subcommittee's review we have included two newspaper articles of the town's formal testimony that have been written about our power supply projects. As you can see, we have shown our doubters that small consumers will also benefit from electric competition.

I thank you for your invitation to appear before you today.

[The prepared statement of Hon. Preston Bass follows:]

PREPARED STATEMENT OF THE TOWNS OF BLACK CREEK, LUCAMA, STANTONSBURG, AND SHARPSBURG

In May of 1996, the Towns of Black Creek, Lucama, and Stantonsburg appeared before the U.S. House of Representatives, Committee on Commerce, Subcommittee on Energy and Power to discuss our ongoing wholesale power project. At that time, we understood that we were some of the first, if not the very first, municipalities in the country to aggregate our energy loads and purchase power on the open power markets. Being first is never easy as we encountered numerous obstacles on our path to lower cost power.

The bigger utilities in our state said that three small towns in Eastern North Carolina would never be able to attract enough attention in the open market to get lower electric rates. They said that we were simply too small and that no power supplier would want to serve towns that were almost entirely residential loads. Now, three years after we first appeared before this subcommittee, the Towns of Black Creek, Lucama, and Stantonsburg are proud to return and announce that we successfully completed our project and cut our wholesale electric costs by approximately 50%.

The Towns of Black Creek, Lucama, and Stantonsburg are also happy to announce that we are not now alone in successfully completing a wholesale power project. Earlier this year, the Town of Sharpsburg, NC, joined us by completing its wholesale power project and cut its power costs by roughly 40%.

The Towns of Black Creek, Lucama, Stantonsburg, and Sharpsburg were able to cut their power costs due to the Energy Policy Act of 1992 (EPACT). This federal law allowed wholesale customers, such as these towns, to shop the open power markets and obtain lower cost power supplies. We are thankful to the actions of current and former Congressmen and women that voted to enact this bill. Due to their strong actions, we were able to drastically cut the rates that our citizens pay for electricity.

Three years ago the Towns of Black Creek, Lucama, and Stantonsburg had some of the highest electric rates in the country. Typical residential electric rates were in the range of 11 to 12 cents per kWh. Now, each town has cut its electric rates at least 25% and growth is returning to the towns. In Sharpsburg, where the lower cost wholesale power has been flowing for only six months, the town has already cut rates 12% and is currently examining further rate cuts. Each town is also now

upgrading their distribution systems as well as making payments on the new substations and distribution lines needed to complete the projects.

Power Project Results

Examples of economic growth and improvements in citizens' quality of life due to lower electric rates abound in each town.

In Black Creek, an electrical contractor that employs approximately 35 people recently relocated to the town due, in part, to lower electric rates. A developer, attracted by the lower electric rates, is also now constructing a large new subdivision in the town.

In Lucama, many residents are senior citizens that often live on social security checks alone. The 25% cut in the town's electric rates means that these senior citizens and other town residents will save over $300,000 per year. All four towns have about 1,000 customers each. Savings of this magnitude are huge for the typical consumer. Hopefully, senior citizens will no longer sit in the stifling summer heat afraid to turn on their air conditioning for fear of high electric bills that they cannot afford to pay. Furthermore, the Lucama Town Board may not yet be done cutting retail rates. Later this summer, the Town Board will examine the possibility of cutting rates even further.

In Stantonsburg, new home applications are on the rise as the result of the completion of the towns' wholesale power project in February of 1998. Stantonsburg received no more than 6 residential applications in the two years before completion of the project. Now, less than 18 months after completion of the project, the town has 25 new home applications. Since the completion of this wholesale power project, the town board has cut residential rates approximately 33%, which translates into annual savings of $499 for the typical residential consumer using 1,000 kWh's per month.

In Sharpsburg, the largest subdivision in the town's history is now being constructed. The subdivision is over 100 acres and will be home to approximately 200 families. The 12% rate cut that the town board approved in early 1999 lowered residential rates to roughly 8 cents per kWh. The further rate cuts that are anticipated will lower the town's residential rates to some of the lowest in the southeast, and perhaps, the country.

Rates in North Carolina

The Towns of Black Creek, Lucama, Stantonsburg, and Sharpsburg are fortunate that we were able to reduce energy costs to our citizens. Changes in federal law allowed us to improve the lives of our citizens as well as our local economies. Other towns in North Carolina are not as fortunate. Since the vast majority of North Carolinians take retail electric service from investor-owned utilities regulated by the state, these citizens must wait for passage of retail customer choice legislation before they realize any meaningful cuts in electric rates.

Contrary to what you might have heard through other sources, North Carolina is NOT a low cost state. Our state's average industrial cost is higher than the national average and our average residential cost is the second highest in the southeast.

Jobs are currently being lost in our state specifically due to high electric rates. Recently, for example, a textile plant in Goldsboro, NC moved its operations to South Carolina, citing high electric costs as the reason for leaving our state.

Preparing for Retail Electric Competition

The Towns of Black Creek, Lucama, Stantonsburg, and Sharpsburg will be ready for retail electric competition when it finally arrives in our state. Given the high rates that exist in our state, coupled with the fact that over 21 states have now passed customer choice legislation, we know that the state's electric industry must be changed.

We began our preparation for retail customer choice in electricity by entering into relatively short-term wholesale power supply contracts. All four towns have contracts that end no later than Dec. 31, 2002, which will then free us to offer customer choice in electricity to our citizens at about the same time as it MAY become available to others within our state.

If legislation is passed that will give municipalities the choice of opting out of customer choice in electricity, we will examine which of the following two alternatives will give our citizens lower electric rates:

1. the towns continue to act as load aggregators and purchase power supplies for our consumers; or
2. our individual consumers purchase their own power supplies and the towns will deliver those power supplies to our citizens.

Since each town is currently acting as a distribution utility and does not own any generation assets, we believe that the financial condition of the towns' electric systems will not be affected by retail electric competition. It does not matter to us whether we buy the electricity for our citizens or they purchase it themselves. Our primary concern is that our citizens obtain the lowest cost and most reliable electricity available.

Also in preparation for retail customer choice in electricity, all four towns are now upgrading their individual electric systems to improve system reliability. Old copper wire is being replaced, old poles are being replaced, and distribution lines in heavily wooded areas are being moved. Service has been, and will continue to be, a top priority for us regardless of who buys the electricity for our citizens.

Small consumers can and are benefiting from electric competition. The Towns of Black Creek, Lucama, Stantonsburg, and Sharpsburg are living examples of such success.

Mr. BARTON. Thank you, Mayor, we appreciate your testimony and it sounds like you have got a real success there in what you have done and the benefits you have been able to bring your constituents. So we are very pleased with that.

Mr. Argo, we are going to now recognize you. Your statement is in the record in its entirety and we will recognize you and then hopefully have some questions for you after the others have spoken. Welcome to the subcommittee.

STATEMENT OF GENE ARGO

Mr. ARGO. Thank you. My name is Gene Argo. I am President and General Manager——

Mr. BARTON. Really pull the microphone up. These microphones do not work well if they are not really close to you.

Mr. ARGO. That may be good, too. I am President and General Manager of Midwest Energy and I thank you for the opportunity of allowing me to testify as a rural energy provider. I would also like to, I guess I am in the right climate for it, thank the State of Texas for moving ahead. I am grateful for them for that, but more grateful to them because my daughter went to work for the State of Texas this morning at 0800.

Mr. BARTON. Whereabouts?

Mr. ARGO. In Austin.

Mr. BARTON. Oh, not in the State office up here. Well, that is good. And she is working in the Capitol?

Mr. ARGO. I am not sure where her office is but it is in Austin.

Mr. BARTON. But it is the State of Texas itself? Well, very good. We will check up on her for you.

Mr. ARGO. I would appreciate that, and the Bank of Dad appreciates that, too.

I would like to point out that Midwest Energy is a rural electric cooperative. We serve 35,000 electric customers with over 10,000 miles of distribution in transmission line. This equates to 3.5 customers per mile. We also serve 43,000 natural gas customers and 2,000 propane customers. These customers are located in 39 counties covering over 21,000 square miles.

As we are all very well aware, there have been more change in the energy business over the last five than in the previous 60. We recognize that change is accelerating and often difficult to accept. No one has ever said that change in this industry would be easy, but at Midwest energy we think competitive markets will bring benefits for all customers, both urban and rural.

We believe that prices will become more competitive, choices will increase, and utility companies have and will become more innovative. No one knows for sure what the exact impact of the electric restructuring will be in rural communities, or urban communities for that matter.

Midwest Energy however, has taken the position as a rural energy cooperative, that our customers will, and have already benefited, from competitive market in other areas of the energy industry. That basically is why we believe electric restructuring will add value for our customers.

There currently are no Kansas legislative initiatives in place for electric restructuring. Midwest Energy has been in the forefront of the movement to provide competitive markets for our customers. We were the first cooperative in the United States to file open access transmission tariffs with the Federal Energy Regulatory Commission, and we announced a proposed, open access program in 1997.

Midwest Energy has filed for electric rate unbundling at the Kansas Corporation Commission as part of that voluntary program. Wholesale competition is basically in place with the passage of FERC Orders 888 and 889. This has enabled our wholesale customers to shop for the best prices for electric energy.

We support maintaining service territories in place as currently certified, thus preventing duplication of physical distribution facilities. We also proposed that reciprocity should prevail.

Electric utilities in the State are somewhat encumbered by the lack of enabling legislation in Kansas. In 1996 however, the Kansas legislature authorized and formed a Retail Wheeling Task Force.

Along with a 3-year moratorium to study the issue the results of this task force were recommended legislation requiring unbundling by January 2000 and full, retail, open access by July 1, 2000. The bill was never enacted.

Rural electric providers can and will take necessary steps to protect assets and provide added value with good service and reasonable prices. Whether as a result of pending open markets or good business strategies, Midwest Energy and others have already initiated this process.

The steps Midwest Energy took to increase member value under new business conditions began after the passage of the Energy Policy Act of 1992, FERC Orders 636, 888, and 889, and are included in the written testimony.

Let me emphasize that preparing for competition in our case does not mean reducing customer service. In a world of corporate downsizing we have chosen not to send customer calls to a distant call center and to keep all local offices and service centers open. We are also hiring more customer service representatives to provide extended hours.

While this might not work for others this plan fits our customer service objective in a very competitive environment. As we continue to examine restructuring of the electric industry, it is important to understand a very significant difference between the energy commodity and the delivery systems that are in place and required to deliver the service.

For many if not most rural cooperatives, the cost of the commodity is well over half of the cost of the electric bill. It is this portion that will initially be subject to competitive forces and is the focus of current restructuring movement. Suppliers will compete to earn the customer's business.

Too many assume that every high priced supplier will be guaranteed a place at the table, that high-cost power will simply flow to low-cost States in some sort of cost averaging, and everyone's place in the market will be preserved.

Frankly, I am not aware of any other competitive market where high-priced providers are guaranteed a right to my business. Only if they improve efficiency and lower costs will they remain in the market.

I will move ahead and close simply by saying that competition in the service delivery area will, and in some cases, already surfaced. Construction, maintenance, billing, and other services are changing. New technologies such as disbursed generation, may even replace the high-cost, rural delivery system in some situations.

This can and will continue to occur with or without restructuring or legislation. As a rural energy provider with firsthand experience in these markets, I can sincerely say that the energy customers benefit from competition. And I thank you for allowing me to testify.

[The prepared statement of Gene Argo follows:]

PREPARED STATEMENT OF GENE ARGO, PRESIDENT AND GENERAL MANAGER, MIDWEST ENERGY, INC.

Good morning. My name is Gene Argo. I'm President and General Manager of Midwest Energy, Inc. I thank you for the opportunity to testify as a rural energy provider.

Midwest Energy is a rural energy cooperative. We serve 35,000 electric customers with over 10,000 miles of distribution and transmission line. This equates to 3.5 customers per mile. We also serve 43,000 natural gas customers and 2,000 propane customers. These customers are located in 39 counties, covering over 21,000 square miles, in central and western Kansas.

As we all are very well aware, there has been more change in the energy business over the last 5 years than in the previous 60. We recognize that change is accelerating and often difficult to accept. No one has ever said that change in this industry would be easy, but at Midwest Energy, we think competitive markets will bring benefits for all customers—both urban and rural. We believe that prices will become more competitive, choices will increase, and utility companies have and will become more innovative.

No one knows for sure what the exact impact of electric deregulation will be in rural communities, or urban communities for that matter. Midwest Energy, however, has taken the position as a rural energy cooperative, that our customers will and have already benefited from competitive markets in other areas of the energy industry. That, basically, is why we believe electric deregulation will add value for our customers.

There are currently no Kansas legislative initiatives in place for electric restructuring. Midwest Energy has been in the forefront of the movement to provide competitive markets for our customers. We were the first cooperative to file open access transmission tariffs with the FERC and we announced a proposed Open Access Program in 1997. Midwest Energy has filed for electric rate unbundling at the Kansas Corporation Commission as part of that program.

As you know, wholesale competition is basically in place with the passage of FERC Orders 888 and 889. This has enabled our wholesale customers to shop for the best prices for electric energy. We support maintaining service territories in place as currently certified, thus preventing duplication of physical distribution facilities. We also propose that reciprocity should prevail.

Electric utilities in the state are somewhat encumbered by the lack of enabling legislation in Kansas. In 1996, however, the Kansas Legislature authorized and formed a Retail Wheeling Task Force, along with a three-year retail wheeling moratorium, to study the issue. The result of this Task Force was recommended legislation in the form of a bill that would require unbundling by January 1, 2000, and full retail open access by July 1, 2000. The bill was never enacted.

In preparation for a more competitive environment, rural electric providers can and will take necessary steps to protect assets and provide added value with good service and reasonable prices. Whether as a result of pending open markets or good business strategies, Midwest Energy and others have already initiated this process.

For example, the steps Midwest Energy took to increase member value under new business conditions began after the passage of the Energy Policy Act of 1992, and FERC Orders 636, 888 and 889.

These steps included:

—The divestiture of older, costly base load generation in favor of flexible energy and capacity agreements with a major supplier. Several years ago, Midwest Energy made the decision to sell several generating facilities. The decision was financial, in that it was going to take an excessive amount of investment to upgrade these facilities to meet power pool requirements. This decision was made easier with deregulation on the horizon.

—In 1997, Midwest Energy initiated an "Open Access" program designed to offer more choices to all classes of customer, beginning with the unbundling of electric bills into transmission, distribution and generation components. In the near future, we plan to offer optional rate plans including a "green" power plan using environmentally friendly generation, an "indexe" rate plan tied to farm commodity prices, or to the price of oil, and a fixed rate plan. All of these will be offered as choices to customers.

—Last year we established an unregulated marketing affiliate giving our members the opportunity to participate in margins not previously available. This affiliate is now competing in several states, selling an energy commodity to industry, small business and residential customers both inside and outside our regulated service territory.

—For the last six years, we have continued to address potential competition by upgrading and increasing services in the areas of technology, construction, maintenance, marketing, organizational improvements, and customer choice.

Let me emphasize that preparing for competition does not mean reducing customer service. In a world of corporate downsizings and office closings, we have chosen not to send customer calls to a distant call center, and to keep all local offices and service centers open. We are also hiring more customer service representatives to provide extended hours. While this might not work for others, this plan fits our customer service objectives in a competitive environment.

As we continue to examine deregulation of the electric industry, it is important to understand the very significant difference between the energy commodity and the delivery systems that are in place and required to deliver the service.

For many, if not most rural cooperatives, the cost of the commodity is well over half the overall cost of the electric bill. It is this portion that will initially be subject to competitive forces and is the focus of the current restructuring movement. Suppliers will compete to earn customers' business. Too many assume that every high priced supplier will be guaranteed a place at the table; that high cost power will simply flow to low cost states in some sort of cost averaging and everyone's place in the market will be preserved. Frankly, I am not aware of any other competitive market where the high priced providers were guaranteed a right to my business. Only if they improve efficiency and lower costs will they remain in the market.

In addition to the commodity, the other significant component of utility bills is the cost of the delivery service. There is no question that delivery to sparsely populated rural areas has for decades cost more on a per customer basis. I doubt that will change, and it is independent of the cost of generation. But we should not let the higher cost of rural delivery blind us to the opportunities presented by competitive supply options. Our rural cooperative distribution system is owned by our members and should be operated to their advantage. Rural electric distribution cooperatives do an excellent job of controlling delivery costs while providing quality service.

Competition in the service delivery area will and, in some cases, has already surfaced. Construction, maintenance, billing and other services are changing. New technology such as dispersed generation may even replace the high cost rural delivery system in some situations. This can and will continue to occur with or without legislation or deregulation.

The point is—rather than do nothing and predict doom, we suggest energy providers strive to develop business strategies for a new era, designed to add value in

open markets. After all, in our case, coop members own the system. We owe them nothing less.

As a rural energy provider with first hand experience in open markets, I can sincerely say that energy customers benefit from competition. Thank you for the opportunity to testify before you today.

Mr. BARTON. Thank you, Mr. Argo, and we will keep an eye on your daughter down in Austin, Texas. There are some pretty fast people down there, so I will make sure the Governor gives her some protection from those wild Texans.

Mr. ARGO. I would sure appreciate that.

Mr. BARTON. We are next going to hear from a very unusual co-op in New York City. And I am told, Mr. Wortham, that you are from Texas, is that right?

Mr. WORTHAM. That is correct. When Senator Sibley was a freshman member of the State Senate my office was across the hall from him.

Mr. BARTON. So you know, we had to go to New York but we were very careful in who we chose to come from New York to testify. So you are recognized——

Mr. WORTHAM. It is the experience of diversity. It is very good.

Mr. BARTON. That is true. You are recognized. Your statement is in the record in its entirety and you are recognized for 6 or 7 minutes to elaborate on it. Welcome to the committee.

STATEMENT OF GREGORY L. WORTHAM

Mr. WORTHAM. Thank you, Mr. Chairman, and members. We appreciate the opportunity to come here and explain very briefly what the Nation's newest rural electric cooperative is doing in New York City, which some might consider an ultra, high-density rural area.

We are a provider of energy and telecommunications services throughout New York City, organized initially by housing cooperatives to serve housing cooperatives, which are privately owned, owner-occupied housing. About 1.5 million residents in New York City live in housing cooperatives. But as we have moved into the early months of our operation we have already moved well beyond serving housing cooperatives.

At the current time, after 3 months of electric competition in which we have been involved, we service families and businesses throughout all five boroughs of New York City and Westchester County: office towers, small businesses, churches and synagogues, individual families and homes and apartments all across the metro region. And basically every ethnic group and every socio-economic category, customers from Park Avenue to Harlem.

Just to give you some idea, we service currently in 130 zipcodes in New York City and another 24 in the suburbs of Westchester County. We will also be expanding as the markets expand. We expect to be actively involved in the competitive market in New Jersey in the metro areas when that opens up beginning this fall.

Also, we have sought additional authority from the Public Service Commission in New York to service territories throughout upstate New York which we expect to have later this week or next week.

We are actually actively involved with rural electric cooperatives throughout the country to deliver a lot of our services: our wholesale power services, our utility interaction-type services, and some

of our back office services. We have contractual relationships with electric cooperatives in rural areas of North Carolina, Indiana, Kentucky, Ohio, and Illinois.

We are currently and expect to continue to be, a cooperative that receives no government financing; its entirely privately financed and we are a taxable corporation. The example that has been set by 1st Rochdale has evolved in parallel with similar initiatives in other metro areas and is also serving as a model for those other areas.

The city of Washington, the District of Columbia, are looking very seriously at forming a metropolitan cooperative as one option for their consumer residents. In California as you are well aware, the residential market for those tens of millions of customers has been left fairly bare of those choosing to serve them. So credit unions in California are looking at the concept of forming an electric cooperative.

In Detroit and in other parts of Michigan, both urban legislators and manufacturers in Michigan are looking at the concept of forming new types of cooperatives. And we have also been very active working with cooperative organizations and other consumer groups in Chicago to form a metropolitan cooperative there in cooperation with the rural electric cooperatives of Illinois.

Some of the critical issues that we have seen is that a consumer-owned alternative must be enabled in each particular jurisdiction. We have seen that rural, urban and suburban consumers want the cooperative opportunity. Although we certainly don't advocate that there would be any type of requirement that people belong to a cooperative we certainly have seen that people in unexpected territories like the concept of having that as one of their options.

We believe that is a critical part, as Chairman Bliley said, of making sure that the customer remains the focus in customer choice, and we believe this is one way to accomplish that. We have also seen the real world impacts of market power, at both the wholesale level and the retail level.

We are working actively with other parties to form the New York Independent System Operator, which the good news for us is that it is seven IOUs instead of the one that we use as our regulator in New York City. But unfortunately, that still is a remnant of the past type of electric market and is not representative of the competitive market that Congress and the Federal regulators are attempting to create.

On the retail level we are reminded every day about market power. The New York Public Service Commission has delegated to the investor on utilities the right to be the regulator. So our official regulator in the city of New York is the Consolidated Edison Company of New York, the monopoly that is supposed to be broken up through this activity.

They set customer backout rates in-City capacity thresholds, which of course they own all the capacity in the city so that is somewhat of a problem. But they are divesting and so next year that transition period will essentially be over and we will have more options. They also impose significant restrictions on the ability of the customers to sign up for competitive companies.

On the other hand, while we do have some options for capacity in nearby territories, Con Edison has already consolidated with one of those so that the Orange & Rockland Utility is now essentially a subsidiary of Con Edison, which further restricts opportunities for new development.

Also, the micro turbines, other types of distributed generation, fuel cells, solar opportunities that we are looking into, Consolidated Edison as the dominant utility, has the ability to set rules which are essentially above and beyond the engineering and cost structures of other utilities, which retards the opportunity for those types of technologies to develop.

In closing, what we would like to say is that although the New York State plan is not perfect we support the primary role of the States to determine the unique aspects of their own territories and how to implement retail wheeling in those States.

And we also believe that Congress can play a major role in ensuring at least a minimum level of consumer protection in any State that chooses that act. Thank you very much.

[The prepared statement of Gregory L. Wortham follows:]

PREPARED STATEMENT OF GREGORY L. WORTHAM, CHIEF OPERATING OFFICER, 1ST ROCHDALE COOPERATIVE

Mr. Chairman and Members of the Subcommittee, it is a pleasure to have this opportunity to discuss the cooperative perspective on state and local issues that are arising as customer choice becomes more prevalent in the electric power industry.

Background of 1st Rochdale Cooperative

1st Rochdale[1] Cooperative is a consumer-owned provider of energy and telecommunications services in metropolitan New York City. 1st Rochdale Cooperative is the only consumer-owned provider of electricity participating in the competitive market in New York.

1st Rochdale Cooperative was developed by New York City consumers and is governed by them. An alliance of New York City housing cooperatives created 1st Rochdale Cooperative to maximize local control over opportunities that will emerge from new competitive environments in the energy industry and to provide for aggregated procurement and delivery of other goods and services consumed regularly by the owner-residents of New York City's housing cooperatives. Roughly 1.5 million New York City residents live in housing cooperatives—privately owned multi-family housing from low-income neighborhoods to multi-million dollar apartments.

1st Rochdale Cooperative was initially envisioned as an aggregator that would merely maximize the consumer market position of participating housing cooperatives and seek to negotiate the best possible deal for electric power on a joint procurement basis. Likewise, 1st Rochdale Cooperative was initially conceived as a vehicle that would serve primarily the housing cooperatives that established 1st Rochdale Cooperative. In the fast-paced evolution of the competitive electric industry, however, both of these initial limitations have been overtaken by events.

First, because of the complimentary skills demonstrated over several decades by the Nation's rural electric cooperatives, 1st Rochdale Cooperative became convinced that a contractual business alliance with electric cooperatives would enable New York City housing cooperatives to play a much more comprehensive role in their own procurement of power. Mere retail negotiation would evolve upstream to include wholesale acquisition and retail delivery (over the regulated transmission and distribution systems of intervening regional utilities).

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[1] 1st Rochdale Cooperative is named after the village of Rochdale, England where the modern cooperative movement was established in 1844. From that beginning, cooperatives have established a consistent set of principles that characterize cooperatives as a unique form of business enterprise: (1) voluntary and open membership; (2) democratic member control; (3) member economic participation; (4) autonomy and independence; (5) education, training, and information; (6) cooperation among cooperatives; and (7) commitment to community. For more information about cooperatives in general and 1st Rochdale Cooperative specifically you may consult www.1stRochdaleNYC.net.

Second, more than a year before its first delivery of electricity, significant commercial accounts approached 1st Rochdale Cooperative to sign up for cooperatively procured electric power. Based on such customer demand, as described below, 1st Rochdale Cooperative is already providing services to every class of customers—from large Manhattan office towers to single-family homes on Staten Island, for example.

1st Rochdale Cooperative's Current Scope

Only three months into electric operations, 1st Rochdale Cooperative now provides electric energy to families and businesses throughout all five boroughs of New York City and Westchester County. 1st Rochdale Cooperative's customer base includes large housing cooperatives, small housing cooperatives, office towers, small businesses, religious institutions, and individual families in homes and apartments throughout the metro region. 1st Rochdale Cooperative's customers represent dozens of ethnic groups throughout the City, from Park Avenue and Central Park West to Harlem and Washington Heights, Staten Island and Coney Island to New Rochelle.

As an indicator of the socio-economic and geographic breadth of those consumers who have already chosen a cooperative electricity provider in the Nation's largest city, 1st Rochdale Cooperative serves customers in more than 130 zip code areas within New York City (34 in Manhattan, 45 in Queens, 14 of 26 in The Bronx, 31 of 52 in Brooklyn, and 10 of 14 zip codes on Staten Island), and its customers are spread across another 24 zip codes in suburban Westchester County.

Later this summer, 1st Rochdale Cooperative will begin providing satellite television to hundreds of families in The Bronx. Thereafter, 1st Rochdale Cooperative will offer the service to other housing cooperatives throughout the City whose boards and residents have requested the service. 1st Rochdale Cooperative will also begin providing high-speed Internet access and other telecommunications services to housing cooperatives and commercial customers later this summer.

1st Rochdale Projected Short-Term Growth

As new products and services are added and as electricity customer choice expands in and around New York City, 1st Rochdale Cooperative will demonstrate significant growth even in the next year.

1st Rochdale Cooperative will actively participate in the competitive electric power market in New Jersey. Pursuant to recently enacted statutes and ongoing state regulatory implementation, 100 percent of New Jersey customers will have choice of electric energy providers beginning on October 1, 1999. 1st Rochdale Cooperative will apply for retail provider status pursuant to New Jersey law and expects to be serving residential and commercial customers in New Jersey later this year.

Currently certified by the New York Public Service Commission to serve in the metropolitan New York territory of the Consolidated Edison Company of New York, 1st Rochdale Cooperative has applied to the Public Service Commission—and expects to receive imminent authority—to serve residential and commercial customers throughout most of the territory of Upstate New York.

Even with the continued restrictive phase-in of electricity customer choice in New York, 1st Rochdale Cooperative will demonstrate marked market growth within New York City and Westchester County next year. Serving both residential and commercial customers, 1st Rochdale Cooperative will offer electricity and other energy and telecommunications services to tens of thousands more New York families and businesses next year. When Consolidated Edison allows 100 percent of metro New York customers to have unrestricted access to a competitive market in 2002, 1st Rochdale Cooperative will be a secure participant in the competitive landscape with a firm commitment to remain in the energy and telecommunications markets for as long as 1st Rochdale Cooperative continues to bring value to its customers.

1st Rochdale Cooperative exhibits the cutting-edge innovation that has been characteristic of the Nation's rural electric cooperatives since they began serving "impossible" territories that investor-owned utilities repeatedly spurned more than a half-century ago. 1st Rochdale Cooperative is committed to demand-side management and state-of-the-art dispersed generation that will benefit customers and increase reliability within the physically constrained New York City area—which lies on three islands and a peninsula. 1st Rochdale Cooperative will sponsor a demonstration project of the new 75-kilowatt Allied Signal micro-turbine technology at a housing cooperative in Midtown Manhattan. 1st Rochdale Cooperative is actively pursuing mechanisms to utilize rooftop solar energy applications at a housing cooperative in The Bronx. 1st Rochdale Cooperative will also respond to its customers' requests by offering natural gas and heating oil by the end of 1999.

Urban-Rural Partnership

Although 1st Rochdale Cooperative is the Nation's first metropolitan cooperative to over electricity on the open market, 1st Rochdale Cooperative has a strong oper-

ational bond with the Nation's rural electric cooperatives. Rural electric cooperatives—which have been providing reliable and competitively priced electricity to their millions of consumer-owners across the United States for more than 60 years—have developed innovative, high-quality skills in the electric power industry that have been invaluable to the start-up and continued successful operation of 1st Rochdale Cooperative. 1st Rochdale Cooperative is a member of the National Rural Electric Cooperative Association and receives its (100 percent private market) financing from the National Cooperative Services Corporation, an affiliate of the National Rural Utilities Cooperative Finance Corporation. 1st Rochdale Cooperative's telecommunications offerings to New York City families and businesses are facilitated by the National Rural Telecommunications Cooperative.

1st Rochdale Cooperative combines the unique skills of the New York City housing cooperative family with those of the rural electric cooperatives. While strategic decisions are governed and implemented by New York City consumers, 1st Rochdale Cooperative has chosen to enhance start-up operations by calling on certain electric industry skills of rural electric cooperatives.

Power supply operations are coordinated through an alliance of Midwestern generation and transmission cooperatives in North Carolina, Indiana, Kentucky, Ohio, and Illinois. ACES Power Marketing, Inc. (www.acespower.com), provides 1st Rochdale Cooperative with wholesale power trading floors at rural electric cooperatives in Indiana and Kentucky. In addition, the North Carolina Electric Membership Corporation provides energy forecasting services for 1st Rochdale Cooperative at its 24-hour control room in Raleigh, North Carolina.

In addition to the extensive customer service network that 1st Rochdale Cooperative has established throughout New York City, a customer service call center is operated for 1st Rochdale Cooperative at a rural electric cooperative in Wake Forest, North Carolina. North Carolina rural electric cooperatives also provide 1st Rochdale Cooperative with billing and payment remittance services. Metropolitan electric cooperative operations solidify and increase jobs at rural electric cooperatives through fee-for-service contracts.

Private Financing

1st Rochdale Cooperative receives no government financing. 1st Rochdale Cooperative's financing comes completely from the private market under the primary auspices of the National Cooperative Services Corporation, an affiliate of the National Rural Utilities Cooperative Finance Corporation, based in Herndon, Virginia. 1st Rochdale Cooperative has received start-up capital infusions from New York City housing cooperatives and from rural electric cooperatives. 1st Rochdale Cooperative is a taxable corporation, subject to all applicable federal, state, and local corporate taxation.

Other Metro Interest

Many other urban areas not currently served by electric cooperatives are now taking advantage of the opportunities presented by evolving customer choice to introduce a consumer-owned alternative for metropolitan residents—so that may have the same community focused energy providers as 75 percent of the geographic area of the U.S.

Regulators and consumer leaders here in the City of Washington are seriously evaluating formation of a cooperative electricity provider for the residents and businesses of the District of Columbia. Urban legislators in Detroit and large manufacturers are working with Michigan's rural electric cooperatives to expand the not-for-profit reach of electric cooperatives in that state. In California, the shocking absence of companies even offering electricity to the Golden State's tens of millions of residential consumers has led credit unions to investigate formation of urban electric cooperatives. At the same time, California's leading agricultural cooperatives have already formed the California Electric Users Cooperative—which began supplying electricity to cooperatively owned manufacturing facilities and their member farmers at the very outset of California's competitive electricity market.

Officials from 1st Rochdale Cooperative and national cooperative organizations have also been actively working with diverse consumer leaders in Chicago to create a metropolitan electric cooperative there as the competitive electric market develops in Illinois. In Chicago, as in most of the other initiatives, local community leaders have thorough knowledge of the local market and a strong desire to control their own fate under customer choice—but often lack certain skills unique to the utility industry. As has been the case with the rural electric cooperatives pivotal in the operation of 1st Rochdale Cooperative, the Illinois rural electric cooperatives have been working with Chicago community leaders to address utility issues. The very skills lacking among many interested consumer groups—such as utility operations,

power supply scheduling, and billing—are at the core of activities undertaken by rural electric cooperatives on a daily basis for decades. As consumers actively search for ways to fully participate in a customer choice market, there is natural affinity between metropolitan consumer-based organizations and rural electric cooperatives.

Critical Lessons

1. **A consumer-owned alternative must be enabled in every jurisdiction**. Actual results in competitive markets have demonstrated through free enterprise that consumers—rural, suburban, and urban—clearly want a cooperative option. 1st Rochdale Cooperative certainly does not advocate a mandate that consumers be *required* to join a cooperative, but we strongly advocate that any legislative or regulatory restructuring initiative must enable a consumer-owned option. The 1st Amendment to the Constitution guarantees the right of the people peaceably to assemble. Citizens should not be prohibited from joining together in consumer-owned entities to provide products and services for mutual benefit. "Customer Choice" must be designed around the **customer** and the *customer's* choice. "Customer choice" should not be a mere euphemism for a regime that only considers the well-being of energy companies and *energy companies'* choice of whether to serve.

2. **Our real world experience has demonstrated that market power—at both the wholesale and the retail level—is a serious threat to efficient development of a truly competitive market in electricity that will benefit consumers in the long run.** As the structure of the wholesale market continues to evolve from the Congressional directives encompassed in the Energy Policy Act of 1992, market power continues to be a challenge. For example, as New York's high-voltage transmission system is in the midst of transition from the New York Power Pool (controlled by the state's seven investor-owned utilities) to the New York Independent System Operator, 1st Rochdale Cooperative is actively working to ensure that the governance of the new wholesale institution actually results in an "independent" system operator. Our concern is heightened by the fact that the state's seven investor-owned utilities are now effectively six due to consolidation (so far). The "independent" system operator must facilitate evolution of the *competitive* market that the Congress, federal regulators, and state legislators and regulators are striving to create. New market institutions such as "independent" system operators must not merely perpetuate the monopoly industry structure that these bold legislative and regulatory initiatives have been designed to replace.

On the retail level, 1st Rochdale Cooperative is reminded at every turn of the dampening effect that market dominance has on the evolution of a fully competitive retail market. As examples—first, the New York Public Service Commission has delegated to the Consolidated Edison Company of New York the authority to regulate the implementation of customer choice within its service territory—including such basic elements as setting customer back-out rates (called "shopping credits" in the Consolidated Edison territory), in-City power capacity thresholds, and restrictions on customer enrollments.

Second, Consolidated Edison has led the way in regional consolidation by acquiring Orange & Rockland—one of the few nearby territories that could serve as a source of new generation for the constrained metro New York area. Similarly, on Long Island, the symbiotic relationship between the Long Island Power Authority (regulator of customer choice on Long Island) and the Keyspan companies (designers of customer choice on Long Island and a competitive electricity supplier throughout metro New York) raise questions among many consumers, especially when zero Long Island customers are taking competitive electricity despite the existence of a "competitive" market on Long Island since April 1999.

Third, the local monopoly utility also controls the fate of consumer-controlled technologies such as dispersed generation—which will enhance local power reliability at a time when even Consolidated Edison may have difficulty meeting its own 80 percent in-City capacity requirement. Consolidated Edison has authority to set interconnection requirements, and their unique requirements exceed those of many other local utilities, thus decreasing the savings to consumers of new technologies. As the local distribution utility, Consolidated Edison also has authority to impose standby charges that could further significantly reduce customer savings and thus the fledgling market for new technologies that enhance reliability, produce energy more efficiently, and increase the customer's role in their own energy management.

Conclusion

1st Rochdale Cooperative appreciates the opportunity afforded by the Subcommittee on Energy and Power to present our views on the current state of the competitive electric industry and to advocate protections for customers in a "customer choice" environment.

Mr. BARTON. Thank you, Mr. Wortham. We will make sure that the big city boys from Stantonsburg and Paragould don't take advantage of you rural, mid-Manhattan electric co-op guys here. We will provide any protection that you need just like we will Mr. Argo's daughter at Austin.

Mr. WORTHAM. Thank you very much, Mr. Chairman.

Mr. BARTON. Mr. Watson, we are glad to have you here from the great State of Arkansas. We put your statement in the record and we will recognize you to summarize it.

STATEMENT OF LARRY WATSON

Mr. WATSON. Mr. Chairman, I am not from Texas but my son was born in Abilene, Texas, while I was in the Air Force there during the Vietnam War, so its a small world.

Mr. Chairman, members of the committee, it is an honor to testify before you today with regard to State and local issues in electricity competition. While my comments today are my own, they are consistent with the views of the American Public Power Association.

Mr. Chairman, with respect to public power in Arkansas and the rest of the country, I would like to make it clear that public power supports competition, and supports Federal legislation to deal with several key issues.

Public power systems have long played a vital, pro-competitive role in the electric utility industry, serving as a comparison yardstick against which consumers can judge the performance of other utilities. At this critical point in the evolution of our industry, public power supports the enactment of Federal legislation that facilitates and encourages State adoption of retail competition by removing Federal barriers and addressing interstate commerce issues.

Above all else however, public power supports local control and self-determination, and therefore continues to oppose a Federal mandate for retail competition. The citizens of Paragould made the decision in 1938 to operate their own electrical utility when they could not get the service they needed at affordable rates, and they remain happy with that decision today.

State retail competition laws, including Arkansas', have respected local authority and have allowed each public power community to decide for itself whether and when to participate in retail competition based on local circumstances. Local control has worked well for decades to keep rates low and service standards high. We agree with the State policymakers who have found no justification to cede any more of that control to other levels of government.

In Arkansas, public power actively participated in efforts at the State and local level to adopt retail choice initiatives. As I learned at our annual national conference last week, this was also the case for public power systems all around the country that had recently passed legislation; that public power was an active constructive participant throughout the process.

In our State there will be great political and economic pressure to opt-in to competition, but each municipal system will be able to set their own transition timetable.

We in public power have also tried to be constructive in focusing the debate in Washington. Most recently, again at our conference last week, APPA passed a resolution commending two members of this subcommittee, Congressmen Largent and Markey, for their efforts in constructing bipartisan comprehensive legislation.

Among the many aspects of the bill, Congressman Largent and Markey addressed the primary barrier to public power's involvement in a competitive energy market, the private use issue, by including the provisions of H.R. 721, the Bond Fairness and Protection Act by Congressmen J.D. Hayworth and Bob Matsui, in their bill.

We appreciate that very much, as well as the co-sponsorship of Representatives Cox from California, Boucher from Virginia, Eshoo from California, and McCarthy from Missouri, among many others, for H.R. 721.

The private use limitations on tax-exempt financing, the primary vehicle for financing State and local government infrastructure projects, limit public power's ability to participate in a competitive market. These limits include competing to retain our existing customers, replacing lost load, and placing transmission facilities in a Regional Transmission Organization; an RTO.

There are other aspects of necessary Federal restructuring legislation that relate to protecting and enhancing what we have accomplished in Arkansas that I would like to touch on briefly.

We believe in the need for strong provisions to protect consumers against market power abuses, including: FERC authority to prevent abuses from occurring; the need to strengthen national reliability standards for the interstate transmission grid; and an unconditional grandfathering mechanism that respects the State decisions that have already been made with respect to competition, including State decisions to respect local control and allow public power systems to opt-in to their new competitive market structure.

Mr. Chairman, I do not have a longer written statement but have included provisions from our legislative efforts in Arkansas, as well as references to other previous communications that expresses APPA's position on the various aspects of restructuring. I look forward to answering any committee questions. Thank you again for the opportunity to testify.

[The prepared statement of Larry Watson follows:]

PREPARED STATEMENT OF LARRY WATSON, GENERAL MANAGER, PARAGOULD LIGHT AND WATER COMMISSION

Mr. Chairman, Members of the Committee, it is an honor to testify before you today with regard to State and Local Issues in Electricity Competition. While my comments today are my own, they are consistent with the views of the American Public Power Association, APPA here in Washington.

Arkansas passed a competition bill a couple months ago in April, that provides for: Competition of all customer by January 1, 2002, but not later than June 30, 2003. In the Arkansas bill investor owned utility and cooperative will offer customer choice on that date. Municipal utilities have the right to opt in to competition on that date, opt in when their City Council or governing board chooses at a later date. In Arkansas, all parties worked for 15 months to finally get a consensus bill that was passed by our legislators.

Mr. Chairman, with respect to public power in Arkansas and the rest of the country, I would like to make it clear that public power supports competition, and supports federal legislation to deal with several key issues. Public power systems have long played a vital, pro-competitive role in the electric utility industry, serving as

a comparison "yardstick" against which consumers can judge the performance of other utilities. At this critical point in the evolution of our industry, public power supports the enactment of federal legislation that facilitates and encourages state adoption of retail competition by removing federal barriers and addressing interstate commerce issues.

Above all else, however, public power supports local control and self-determination, and therefore continues to oppose a federal mandate for retail competition. The citizens of Paragould made the decision in 1938 to operate their own utility when they could not get the service they needed at affordable rates, and remain happy with that decision today. State retail competition laws, including Arkansas', have respected local authority and have allowed each public power community to decide for itself whether and when to participate in retail competition based on local circumstances. The track record that public power has maintained since we began serving our communities over a hundred years ago and has proven to work for our citizens and states have seen no reason to alter that longstanding governing authority.

In Arkansas, public power actively participated in efforts at the state and local level to adopt retail choice initiatives. As I learned at our annual national conference last week, this was also the case for public power in other states that had recently passed restructuring legislation—that public power was an active, constructive participant throughout the process. In our state there will be great political and economic pressure to do so. But they will each be able to set their own transition timetable.

We in public power have also tried to be constructive in focusing the debate in Washington. Most recently, at our annual conference last week, APPA passed a resolution commending two members of this subcommittee, Congressmen Largent and Markey, for their efforts in constructing bipartisan comprehensive legislation. Among the many aspects of the bill, Congressmen Largent and Markey addressed the primary barrier to public power's involvement in a competitive energy market, the private use issue, by including the provisions of H.R. 721, the Bond Fairness and Protection Act by Congressmen J.D. Hayworth and Bob Matsui, in their bill. We appreciate that very much, as well as the cosponsorship of Representatives Boucher (VA) and Eshoo (CA) for HR 721. The private use limitations on tax-exempt financing, the primary vehicle for financing state and local government infrastructure projects, limit public powers' ability to participate in a competitive market. These limits include competing to retain our existing customers, replacing lost load, and placing transmission facilities in a Regional Transmission Organization (RTO).

There are other aspects of necessary federal restructuring legislation that relate to protecting and enhancing what we have accomplished in Arkansas that I would like to touch on briefly. We believe in the need for strong provisions to protect against market power abuses, including FERC authority to prevent abuses from occurring; the need to strengthen national reliability standards for the interstate transmission grid, and a clean grandfathering mechanism that respects the state decisions that have already been made with respect to competition, including state decisions to respect local control and allow public power systems to opt-in to their new competitive market structure.

Mr. Chairman, I do not have a longer written statement, but have included testimony from our legislative efforts in Arkansas, as well as references to other previous communications that expresses APPA's position on the various aspects of restructuring, and I look forward to answering the committee's questions. Thank you again for the opportunity to testify.

Mr. BARTON. Thank you, sir, and thank you for being back on time. You were the only member of this panel that actually was back by 1:45.

We want to now welcome our last witness but certainly not least, Mr. John Tiencken who is the Executive Vice President and Chief Legal Officer for the South Carolina Public Service Authority.

I might let you know that my mother's family are the Hamptons from South Carolina, and General Hampton was a great Governor and Civil War leader in South Carolina. So we are glad to have you here. Your statement is in the record, and we will let you summarize it. Welcome.

STATEMENT OF JOHN H. TIENCKEN, JR.

Mr. TIENCKEN. Thank you very much, Mr. Chairman. You have a very distinguished lineage. Mr. Wade Hampton is well thought of even today in South Carolina.

My name is John Tiencken and I am Executive Vice President and General Counsel for an organization known as the South Carolina Public Service Authority. Now that is a State-owned utility. We are also known by the name of Santee Cooper. We are located in Monks Corner, not far from Charleston; a little town there on the coast of South Carolina.

We are here today however, representing the Large Public Power Council, a group of 21 of the Nation's largest, publicly owned utilities. Our members serve 6 million direct retain customers and we own collectively, 44,000 megawatts of generation and we have 24,000 miles of transmission line.

We serve, Mr. Chairman, in the State of Texas through the Lower Colorado River Authority and through the city of Austin, but we also have members in California, Arizona, Florida, Georgia, New York, Tennessee, and other States.

I would like to focus my remarks if I may, on two issues. The first issue was mentioned briefly by Mr. Watson and that is of very great importance to public power and that is the private use issue. I realize that this may not be the appropriate venue or forum for private use action, however we believe that private use is a necessary component of any complete deregulation package, and that is key and necessary for the support of public power to have some sort of private use reform.

Private use restrictions of course, are imposed by the Tax Reform Act of 1986 and by prior law. They prevent public power companies from selling power to private parties except under certain very specific and regulated conditions.

And if a private use sale takes place the tax exemption for those bonds used to finance the plant which supplied the power, is jeopardized. If we lose the tax exemption we of course, will have significantly higher costs and we believe that that's an unacceptable result.

With the time constraints we have I would like to give you at least one example of a real life situation that we have to deal with, with private use, and that private use on our system, we have a number of big industries, ones that draw a significant amount of power.

We cannot currently sell to those industries under any kind of special contract. The only type of arrangement we can make whereby we sell our power to those industries is under our rates schedules. A special contract is a private use contract. When competition comes, however, those industries will be looking for a special deal, and they can get a special deal now from private power companies but they can't get one from us because of the private use restrictions that we have.

We are going to be faced with a choice: either give those companies a special contract and risk our tax exemption, or the possibility of the loss of a customer in the long-run. So those are bad choices and unacceptable in the long-run. We hope that there

would be some fix for that, and there is a solution which has been proposed.

That solution is found in Mr. Largent and Mr. Markey's bill, and their proposal is to grandfather existing debt and eliminate private use with respect to that debt only. For construction of future generation we would issue taxable debt, and we believe that this is a fair solution to the private use dilemma and one that could be a reasonable resolution that might be acceptable.

We have another issue that we would like to talk about and it is a concern with regard to the jurisdiction of the FERC over transmission. We do not believe it is desirable or necessary that FERC have complete jurisdiction over public power transmission. First, we are already subject to the open access rules of the Energy Policy Act of 1992; those which have helped Mayor Bass so much over there in North Carolina.

Second, we would simply be adding an additional layer of regulation on top of our existing regulation because our transmission rates are set by officials, elected and appointed public officials, and we are not private parties and we do not have a profit motive.

Nevertheless we believe that there is a middle ground on this issue as well, and that is the codification of an approach that the FERC in fact used with Santee Cooper and with other members of the LPPC. Santee Cooper proposed this approach to the FERC in its rulemaking under Order 888 and was in fact, adopted by FERC for voluntary filings.

And it is essentially a Golden Rule. We file a tariff with the FERC which says that anyone who uses our transmission system will be treated the same as we treat ourselves; thus the Golden Rule. This is the so-called comparability standard and it has in fact, worked.

A reasonable middle ground would be to require all public power transmission owners to file such a tariff giving FERC the authority to make sure that the tariff was in fact, comparable.

I would certainly refer you to the rest of my comments in writing, and thank you very much for the opportunity to appear before you today.

[The prepared statement of John H. Tiencken, Jr. follows:]

PREPARED STATEMENT OF JOHN H. TIENCKEN, JR., EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SOUTH CAROLINA PUBLIC SERVICE AUTHORITY ON BEHALF OF THE LARGE PUBLIC POWER COUNCIL

Good morning. My name is John Tiencken, and I am the Executive Vice President and General Counsel of the South Carolina Public Service Authority (Santee Cooper). I am here this morning on behalf of the Large Public Power Council ("LPPC"). I would like to commend the members of the Commerce Committee for their careful and deliberative look at how to restructure the electric industry for the benefit of all consumers, and I appreciate the opportunity to appear before you today. There are many issues to be addressed, but I will focus my comments today on three matters of greatest importance to LPPC's customers—the private use restrictions, which stand to deny public power customers the benefits of competition; the "flexible" mandate proposed by the Administration and Members of this Committee, which could create uncertainty and litigation; and the unnecessary expansion of FERC authority over transmission.

Background

The Large Public Power Council is an association of 21 of the largest state and locally-owned electric utilities in the United States. Our members include the largest publicly-owned retail and wholesale electric power systems in the country. Our

members directly serve approximately 6,000,000 direct retail customers, and own and operate over 44,000 megawatts of generation, or about 11 per cent of the nation's total capacity. In addition, we own and operate in excess of 24,000 circuit miles of transmission lines. Our members are located throughout the country in states including Texas, Arizona, California, Kentucky, Florida, Georgia, New York and Tennessee

Private Use

The first issue I would like to address today is private use restrictions. These restrictions, enacted by Congress in the 1986 Tax Reform Act, were written prior to the advent of a competitive electric industry. Today, these restrictions form a serious barrier to open competition and customer choice. Because of the pace of deregulation in the states, it is important that Congress act immediately to fix this problem. While I know that the changes to the tax code are not within the direct purview of this subcommittee, let me suggest that this subcommittee is a proper forum for helping to recognize the problem and recommend a potential solution.

Public power systems have no practical source of external financing other than the municipal debt markets. Unlike private companies, public entities cannot issue stock. The private use rules which apply to our financing, simply stated, provide that no more than the lesser of 10 per cent, or $15 million of a power plant or transmission line financed with municipal debt, can be sold under contract to a private entity. In a regulated monopoly world that existed prior to competition, this requirement was problematic but manageable. In a competitive world, it is has very serious consequences for our members, which have tens of billions of dollars in outstanding tax-exempt bonds held by thousands of small as well as institutional investors.

In practice, here's what the private use rules mean in a competitive environment, which already is a reality in the wholesale markets and which is becoming a reality in the retail market for nearly half of all the states:

1. In a competitive environment, large customers will seek and obtain special tailored contracts to meet their specific needs, just as they do in buying any product. Because of outdated private use rules, a public power utility may be unable to offer such a contract, *even to customers in their own service territory that they have been successfully serving for decades.* This could deny that customer the best choice in the market, and will lead to loss of customers for the utility for reasons that have absolutely nothing to do with price or quality of service.

2. If a public power system loses a customer in a competitive environment (and all utilities will lose customers), the public system may be unable to re-market the generating capacity it had built to serve that lost customer as a result of the private use rules. Thus, any excess capacity that a public system has may become idle and unproductive for the economy solely as a result of the private use tax rules. Inability to resell the capacity can lead to significant financial losses and reductions in overall economic efficiency. In turn, the remaining customers of that utility would pay higher costs.

3. In its recent order, FERC has strongly encouraged that all transmission-owning utilities participate in Regional Transmission Organizations (RTOs). We support the development of RTOs as important to the establishment of competitive markets. At the same time, private use rules may act to preclude effective participation of public systems in an RTO.

The Solution

Let me assure you that we as public power systems are *not* seeking to expand the use of tax exempt debt to compete in the future. We understand that, in the future, the rules of the road for all participants in the competitive marketplace ought to be as fair as possible, and we are working to that end. Public entities are not created to go out and build merchant plants thousands of miles from their own service territories. On the contrary, we are simply serving our own communities and our own customers. When our states act, we want to offer our customers choice; but when others come in to sell power to customers in our service territories, we then must be able to sell the capacity built for those customers in a productive manner which will keep costs low and at the same time enable us to repay our investors.

Some have suggested that we must choose: either fence in our customers and deny them choice, or defease all our bonds, which as I noted above will lead to dramatically higher prices. We reject the notion that our customers should face a choice of being fenced in and denied choice or having their rates artificially increased. There should be no special "admission charge" for our customers to enjoy the benefits of free market competition. Unlike some of those very utilities that have proposed such fences, we want our customers to enjoy the ability to choose suppliers when our states so decide. In order to accomplish this, we do believe that relief from private

use rules for existing bonds is appropriate, so that we can avoid the seriously adverse financial implications on our investors and our customers that I've discussed today.

The good news is that Congress is currently considering a proposal that the LPPC believes is the right solution to the private use issue. The LPPC has endorsed the private use provisions of the retail competition bill recently introduced by Congressmen Largent (R-OK) and Markey (D-MA). Just as the overall bill represents bipartisan compromise, its private use provisions, which have also been introduced by Congressmen Hayworth (R-AZ) and Matsui (D-CA), represent a fair solution. These provisions allow publicly-owned utilities to elect to grandfather existing tax-exempt debt incurred to build generation facilities, and permits them to operate outside of restrictive current private use rules. In this way, publicly-owned utilities will be able to bring the benefits of competition to their customers. In exchange, publicly-owned utilities would permanently forgo the ability to issue future tax-exempt debt to build new generating facilities. Those utilities that do not elect to terminate issuance of tax-exempt debt would remain subject to modified private use rules.

Jurisdictional Issues

Another issue that raises concerns for our members is the expansion of FERC authority into areas that are already properly managed by locally-owned public power systems. LPPC members own and operate the bulk of the state and locally-owned public power systems in this country. While the Federal Power Act exempts public power from the economic regulation provided for in Part II for profit-making entities, most of us are subject to the transmission access provisions of the Energy Policy Act of 1992 (EPACT). Moreover, the majority of our members, including Santee Cooper, have gone beyond that and have adopted open access tariffs and voluntarily submitted such tariffs to FERC. In fact, Santee Cooper has the distinction of being the first publicly-owned utility to do so. These filings assure that the access provided for in our tariffs meet the standards of comparability and reciprocity that FERC requires.

I am not aware of any instance where an LPPC member has been charged with an unfair or discriminatory denial of access to its transmission system. Notwithstanding that, some have said that our non-profit systems need to be subject to the same type of economic regulation by FERC as profit-making transmission owners. This is both unnecessary and unwise. It calls for an added layer of regulation where none is needed, and it fails to recognize the fundamental difference between a non-profit government owned entity whose rates are set by elected officials and a profit-making entity whose rates are set by private individuals.

If additional federal regulation of state and locally owned transmission is thought to be necessary, we strongly recommend codification of the approach used by FERC with Santee Cooper and other public power open access filings. FERC could be given the authority to review public power open access tariffs for the purpose of assuring they meet the test of open access and comparability, but the legislation should not require such public entities to require the same FERC approval process for transmission rates to which profit-making entities are subject.

Flexible Mandate

Finally, while the LPPC supports the goals of retail competition, we want to impress upon the Committee that the states and publicly-owned utilities are in the best position to determine when and if retail competition is beneficial for their customers. Both the Administration and Largent-Markey bills mandate retail competition by means of what some call a "flexible" mandate. The LPPC recognizes a flexible mandate is a improvement over a hard mandate, but remains concerned that this form of mandate will create uncertainty and could invite legal challenges of local decisions. If a publicly-owned utility determines that retail competition will harm its customers, it should simply be allowed to opt-out. Utilities should not be burdened with providing FERC proof that customers are harmed under the nebulous criteria that the harm can not be "mitigated."

In conclusion, the LPPC believes that the Committee is moving in a positive direction on retail competition issues. We would like to work with you to ensure that the Largent-Markey private use provisions are enacted by this Congress, and to modify the "flexible" mandate and FERC jurisdictional issues to ensure that the federal government acts only where it is necessary and appropriate. Thank you for the opportunity to testify before you today.

Mr. BARTON. Thank you, sir. We appreciate your testimony. Before we go to questions I am told Mayor Bass, that two of your local Mayors who participated with you in aggregation are here. You

just happened to be the one that drew the short straw and lost and had to testify. If they are still in the audience could you introduce them to the subcommittee, please?

Mr. BASS. Yes. If Mayor Ralph Smith of Black Creek would raise his hand?

Mr. BARTON. Why don't you stand up, sir?

Mr. BASS. And Mayor Annie Beasley of Sharpsburg.

Mr. BARTON. Well, I knew she was a lady because she had her hat on and we are glad to have some class in this audience. We welcome both of you and I know that you all have worked with Mayor Bass and have a real success story for your constituents. And we are very pleased that you could come and participate also.

I am going to set the clock and the Chair, I am going to recognize myself for the first 5 minutes of questions.

My first question is to Mr. Wortham. Would your co-op be able to exist in a State that had not opened its market like New York? In other words, could you do what you are doing in Alabama, for example?

Mr. WORTHAM. Not to my knowledge. We could sell other services like satellite television, internet services, that we are going to sell in New York State.

But electricity, we could possibly aggregate to negotiate with to local provider to perhaps get a better deal for residential customers, but we couldn't participate in the wholesale market the way that we do, to directly go to other power suppliers.

Mr. BARTON. Okay. And Mr. Watson, in Arkansas who has just passed a restructuring bill, when does the market become open in Arkansas?

Mr. WATSON. January 1, 2002, or as late as 2003, but there would have to be some things happen for 2003, for June 30. That is if ISO and RTO is not set up in place in our State we have one predominant utility, very predominant, and if the PSC is not satisfied that there has been enough, maybe divesture or that a few of their transmission lines which right now they are not even a member of the reliability council in that area.

And so those are some concerns as to, can that be worked out as to whether, you know, we can start by 2002.

Mr. BARTON. Now, in the interim between now and 2002, can your city do anything? Can it opt-in?

Mr. WATSON. No. No one can opt-in until that day. Now, we are preparing, like everyone else, as municipal. Of course, the IOUs are in for sure; co-ops are in. Municipals have to opt-in at that date. Our utility plan is to opt-in.

You cannot attract new industry in this day and age if you are an island to yourself without competition. It won't happen. And that has been one of my other big jobs; is bringing industry to our town, and it won't happen——

Mr. BARTON. And where is Paragould?

Mr. WATSON. Paragould is 75 miles north of Memphis.

Mr. BARTON. North of Memphis?

Mr. WATSON. Right.

Mr. BARTON. So you would compete with Tennessee and I guess, Missouri?

Mr. WATSON. Missouri, that is right; Tennessee and Missouri.

Mr. BARTON. Maybe Northern Mississippi.

Mr. WATSON. When we compete for jobs, we compete with Northern Mississippi, Tennessee, and Missouri.

Mr. BARTON. So do you feel comfortable that if we don't have this, what has been referred to as the hard Federal date certain mandate, that there is enough critical mass that it will force other States to open up?

Mr. WATSON. I think it is like that young calf running downhill. We pride ourself in being good, economic developers in our small town. We have a lot of major insurers with major names; Fortune 500 companies. And you are not going to get them in the future. They are not going to be captive of anybody to come new. And so it is going to go that direction.

Mr. BARTON. Now Mr. Tiencken, in terms of the private use issue, are you comfortable with the idea of grandfathering existing tax exempt bonds but forcing new transmission to be built with taxable bonds?

Mr. TIENCKEN. We prefer the language which is contained in the Largent/Markey Bill, Mr. Chairman, which does exclude transmission and allowing transmission to still be financing with tax exempt.

Mr. BARTON. Regardless of the load?

Mr. TIENCKEN. Regardless of the load, yes.

Mr. BARTON. Okay. We have a vote on so I am going to reserve the rest of my questions and recognize Congressman Shadegg so that perhaps we can let this panel go and not have to come back in 20 minutes or so. So I am going to yield back my time.

I have some written questions, and the fact that I didn't ask you two doesn't mean that I don't love you. It just means that we are trying to expedite things. But we will have questions for you in the written record.

Mr. Shadegg.

Mr. SHADEGG. I thank the chairman and I want to begin by saying I deeply regret that I was not able to question the first panel which included the witnesses from Texas. As I have listened to their testimony describing the Texas legislation I was and I am with some trepidation, pay a compliment to Texas and this committee. I want to say that it sounded to me like a very thoughtful and very thorough legislation which addressed a lot of the issues of concern to me.

I also am not certain we want to let this panel go because it seems to me they are a repository of a great deal of information, but we may, as a result of the schedule, be forced to do that.

Let me start by asking any of you who might want to comment, if you have had a chance to look at the Texas legislation and would be interested in commenting on how it would affect you and your particular practice if that legislation were in fact, the model across the country for States?

Mr. TIENCKEN. We have examined the Texas legislation. We are currently, in South Carolina, undergoing a review through both the Senate and the House, of various proposals for deregulation.

That review has not yet resulted in any kind of affirmative action out of a committee, however, but the Texas legislation I think, has been a welcome addition to the knowledge base and another

model which we can use toward identifying what's appropriate and the best mechanism to make sure our customers are well protected.

Mr. SHADEGG. Anybody else want to comment?

Mr. WATSON. I can tell you from a State that just passed, somebody defining predominant could be evasive. Who is a predominant provider, who dominates transmission or whatever? What percentage is that? That is of some concern to me in the Arkansas legislation as to the PSC will determine when they feel like that they are not dominant. So I wonder where that might come down.

Mr. WORTHAM. Although I am a resident of New York City my father is on the Small City Advisory Committee for the Texas Municipal League for this restructuring bill, and it is my understanding that this would allow cooperatives, consumer-owned entities, to expand into small towns and also for industrials like the Houston Ship Channel and so forth, to form into cooperative entities.

So in terms of the operations we do in New York City I believe that would be allowed under the Texas law.

Mr. SHADEGG. If I could, let me just interject a second question and maybe we can get a quick answer to this. The chairman of the full committee earlier this week indicated his desire to push legislation and throw support behind that and I believe he's going to be working with the chairman of the subcommittee to draft a bill.

But significantly, in his remarks he said that he felt it was not necessary to include a date certain. To what extent does that provide you a level of comfort and the fact that Texas doesn't have a date certain that allows opt-in/opt-out, and apparently the legislation that Mr. Bliley and the chairman of the subcommittee are going to be pushing would also not have a date certain?

Mr. TIENCKEN. We certainly appreciate the fact that there is consideration for eliminating the date certain. We think that that is necessary. And it gives us the flexibility as public power entities to migrate into what is obviously going to ultimately be some sort of deregulated environment nationwide.

So I think that what we are looking at is, we are looking at the flexibility to choose. Local control is a predominant theme among our municipalities and State-owned entities, and we think that that's most important.

Mr. SHADEGG. Does anybody else want to comment on it?

Mr. WORTHAM. I would echo Mr. Tiencken's response from, first of all our cooperative basically supports the national rule like the cooperative association's position that there should be a flexible mandate allowing a lot of choice to the States. And it also allows the States to be the primary entity and it provides minimal consumer protections for all——

Mr. BARTON. I want to let the witnesses know that we have got about 7 minutes and if your answers are short and the questions are short we will let this panel go in 7 minutes. If the answers are long and the questions are numerous you will have to come back and it will be another 30 or 40 minutes.

Mr. SHADEGG. Well, my questions won't go beyond the next 2 minutes.

Mr. BARTON. Do you want to yield the rest of your time to Mr. Burr? I can see he has one or two questions. And your time did just expire, by the way.

Mr. SHADEGG. Yes, the last 2 minutes of which, you took. I just want to say that—and I will just make it a comment rather than a question. I have to tell you that I am deeply troubled by the private use issue.

I have a great concern about Arizona. In Arizona we have one large IOU serving my district and one large, public power entity serving my district. They are at war over the private use issue. And I am getting all kinds of conflicting information.

For example, I have literature that says to me, well, the IRS regulations recently enacted create both the 6-month window during which a public power entity could sell power without concern for the public use restriction, and that those regulations went beyond that and said, so long as a public power entity is selling power to replace lost load, it can enter into long-term contracts.

I can't take Mr. Burr's time. I would love it if someone could come and try to clarify some of those issues for me. I also note that you are very pleased that the Markey/Largent legislation contains the language from Mr. Hayworth's bill. I am trying to figure out where the difference is.

It seems to me both of them grandfather existing debt, and that therefore the biggest distinction between the two is the income tax provision. If that is true, fine, I understand that distinction. If their treatment of existing debt is different I would like to get an explanation of that.

And with that I will yield back the balance of my time.

Mr. BARTON. We are going to recognize Mr. Burr. Let me make a quick announcement and I am going to let him Chair the rest of the hearing. We are going to be soliciting views from the subcommittee members on their input on a comprehensive bill, and Chairman Bliley and I are going to work with Congressman Hall to draft that bill during the July 4 work period. So I encourage all subcommittee members to answer your questionnaire expeditiously.

With that, I am going to recognize Mr. Burr, let him Chair the hearing, and when you are concluded you can adjourn the hearing.

Mr. BURR. I thank the chairman. Mayor Bass, let me just go to you just very briefly. How many residents called you in your town when you got this new power deal and complained that you were buying power from somebody different now?

Mr. BASS. No one.

Mr. BURR. Would you say that really, residents don't care who they get it from but they do care about the price of it?

Mr. BASS. I think that is a correct statement.

Mr. BURR. They look to you for the reliability aspects and they count on you to negotiate with firms that can deliver?

Mr. BASS. That is correct.

Mr. BURR. Let me ask the rest of you if there is a comment relative to reciprocity. I just heard two people answer yes, we don't like the date certain. Does South Carolina have a problem with reciprocity for States that are open, saying the States that aren't open, your utility can't come in here and sell?

Mr. TIENCKEN. Speaking on behalf of Santee Cooper and not the large public power council in its entirety because I'm not sure where everyone sits on the reciprocity issue, but my belief is that they would share my view which is that reciprocity is a reasonable requirement in a deregulation bill.

Mr. BURR. Mr. Watson?

Mr. WATSON. I agree with that.

Mr. WORTHAM. 1st Rochdale cooperative is competing in New York City against whoever comes into the City and will compete in other jurisdictions where they are open. So we don't really have a position to favor reciprocity or not, given the restrictive market areas that we are competing in.

Mr. BURR. Okay.

Mr. ARGO. Reciprocity is good. Whether or not it should be mandated is another question. I think the market will take care of it. I don't think it is going to be necessary.

Mr. BURR. I would agree with you to a large part, Mr. Argo, but not many in this industry will allow their trust to be in the marketplace maybe, if we could get it right they will learn that the marketplace is in fact, the best barometer.

In an effort to allow me time to go vote, let me take this opportunity to thank you for your patience. This has been an unusual day where we have been called in and out and in and out.

I will assure you that this testimony has been very valuable to the subcommittee as we move forward over the next 4 weeks to try to put together legislation. Please feel free to share with any members of this committee any additional thoughts that you might have about how we get the policy right on this legislation.

This hearing is now adjourned.

[Whereupon, at 2:35 p.m., the subcommittee was adjourned.]