

Introduction

Consumer Protection Issues

Almost every state has a proceeding underway to study or implement the move to retail electric competition. While 12 states (California, New Hampshire, Rhode Island, Maine, Massachusetts, Pennsylvania, Nevada, Oklahoma, Montana, Illinois, Connecticut, and Virginia) have adopted legislation to mandate retail electric competition by a date certain, many other states have initiated regulatory proceedings to explore, and, in some cases, implement, retail competition. In every state that is exploring retail electric competition, legislators, state energy regulators and other state policymakers, business groups, environmental and consumer advocates, and customer groups are trying to determine how this new industry structure will work, what it should look like, and how consumers will be affected.

The adoption of retail electric competition will require states to rethink a broad range of issues concerning the provision of basic electric utility services to all customers. This *Blueprint for Consumer Protection* is intended to help state decision makers respond to one significant part of the overall agenda, referred to as “consumer protection” issues and concerns. Basically, this set of issues will redefine the consumer’s relationship with his/her energy supplier and redefine his/her rights and remedies to obtain and maintain electric service. This document does not address market structure, stranded cost recovery, divestiture, the

approval of mergers and acquisitions, the relationship between retail competition and the environment, or the terms and conditions governing the relationship between distribution companies and new competitive suppliers. While these issues are crucial to the ultimate outcome of any retail electric competition effort, they are beyond the scope of this *Blueprint*.

In general, “consumers” refer to residential and small commercial customers. These customer groups are typically not offered the opportunity to negotiate a customer-specific contract. Rather, they are typically low-usage customers who use less energy or electricity than larger customers. In addition, they typically are offered pre-printed “take it or leave” contracts by suppliers of mass-marketed products; it is likely that electricity will be no exception to this general practice. Finally, these customers typically shop for mass-marketed products without expert assistance and usually do not have legal or financial assistance or the necessary background to negotiate specific deals in the marketplace for such items in their budget.

While most observers would certainly acknowledge that residential customers should be provided some standardized consumer protections, others may question the inclusion of small commercial customers in this group. However, most states that have adopted retail electric competition have included small commercial customers, defined with

respect to their electricity usage or demand criteria, within the consumer protections discussed in this *Blueprint*. Similar to residential customers, small commercial customers use less electricity than larger commercial or industrial customers and usually do not have the time or special skills required to obtain electricity on the basis of individually negotiated contracts. In many states, as well, policymakers have responded to the high incidence of telephone fraud and the unauthorized change of telephone supplier (referred to as “slamming”) that has victimized small commercial, as well as residential, customers.

Consumer protection issues are crucial to the move from monopoly regulation of electricity and gas to a competitive market for generation services. Most participants in the restructuring debate agree that the general public will not consider the prospect of theoretically lower prices in the future as a sufficient tradeoff if the new market also means an increase in fraud, customer confusion, complaints, and inability to understand and participate in a new market structure. In short, consumer protection issues are crucial to the public’s acceptance of competition.

This *Blueprint* is primarily aimed at state-level decision makers in states that have not yet adopted electric restructuring legislation, presenting examples from those states that have progressed to the implementation stage. For readers who may need a primer on the “whys and wherefores” of electric restructuring,

Appendix A contains a short introduction to the forces that have stimulated the move to retail competition in the electric industry.

How The Blueprint Is Organized

The *Blueprint* is organized so that readers can quickly find specific issues and policy discussions. Each issue is presented with background information and a summary of recent state electric competition legislation or regulations on that topic. Key decisions and options are highlighted in text boxes that present examples from states that have already adopted legislation and regulations on these topics.

Chapter I presents an overview of consumer education and disclosure policies and programs. The purpose of these programs is to enable consumers to easily compare offers and to get them interested in shopping for electricity and electricity products. Because electric competition is not being undertaken in response to a grassroots effort (as explained more fully in Appendix A), it is important that residential and small commercial customers not be caught by surprise when these changes are implemented. In addition, a competitive market operates to keep prices as low as possible only when customers are knowledgeable about their options and can compare prices and select the product and price most beneficial to them.

Chapter II addresses the redefined role of the remaining monopoly, the electric distribution company. Every state that is moving to retail electric competition is adopting separate regulatory approaches for distribution and transmission and the generation or sale of electricity. This separation or “unbundling” of the current integrated utility, as well as the manner in which charges are presented on the customer’s monthly utility bill, requires legislators to identify the public policy benefits that are built into the current regulatory structure and the regulated rates. Legislators must also determine whether existing or additional public policy benefits should be added to the new “unbundled” system. The distribution function will typically operate as a monopoly and the state utility commission will continue to regulate it as such. That means that the prices, services and consumer protections associated with the delivery of distribution services will continue to be regulated. However, the distribution company will have a different role from its current one. Its main obligation in the future will be to assure that customers are connected to the distribution system. This differs from the prior obligation of the electric monopoly supplier, which was to assure not only connection and delivery, but electricity services as well. The change in obligation has important implications for the historical state interest in assuring universal availability and affordability of electricity.

Chapter III focuses on regulation of the new actors in the competitive market: suppliers of electricity and electricity services. Suppliers will include new entities and new incarnations of current utilities. Their services and products will be competitive; that is, their prices will not be regulated. However, this does not mean that the competitive suppliers will be entirely free of regulation. Most states are creating licensing criteria and establishing minimum consumer protections, as well as prohibiting unfair trade practices. Such a regulatory approach is similar to other state-regulated businesses, such as consumer credit, banking, insurance and health care. Key issues with respect to the regulation of competitive suppliers include:

- how to prevent “slamming” (a change in the customer’s supplier without permission);
- whether and how suppliers should be licensed;
- how to integrate the regulation of suppliers with existing state and federal consumer protection laws;
- what role suppliers will play in assuring that electricity is availability and affordable to all customers;
- how to prevent redlining; and
- how the supplier’s contract terms and collection remedies should be regulated, if at all.

Chapter IV looks at a new opportunity that will arise with the onset of the electricity competition: the ability to aggregate or create customer pools based on political boundaries (municipal or county) or customer organizations or affinity groups. For example, some advocates for low-income customers point to the possibility of significant benefits for traditionally hard-to-serve customers by grouping them together into a single purchasing entity.

Chapter V explores the implications of the new industry structure on state approaches to regulation and on differences between utility regulation and the regulation of competitive business in general. In effect, the state regulatory approach will move from regulating prices to one that emphasizes consumer

protection and fair trade practices. This fundamental change will require states to rethink the location of new regulatory duties, as well as the enforcement skills and resources that will be needed to accomplish new tasks.

Appendix A contains background information on the economic, technological and political forces that are driving the changes in the electric industry.

Appendix B contains examples of recently-enacted state legislation that addresses consumer protection issues associated with electric competition.

Appendix C contains a bibliography of useful reading materials on restructuring published by the National Council on Competition in the Electric Industry.