

APPENDIX A

A SHORT PRIMER ON RETAIL ELECTRIC RESTRUCTURING

Since the turn of the century, electric utilities have been viewed as “natural monopolies.” Because of the tremendous costs involved in building power plants and transmission lines, electric utilities were assumed to provide a service that only one entity in a given area could deliver efficiently. Utilities were granted exclusive franchises in exchange for submitting to regulation, the purpose of which was, and has continued to be, to assure adequate service at reasonable cost. This traditional picture is changing and this vertically-integrated industry (production/generation, transmission, delivery and sale to retail customers) is being broken into pieces or “unbundled.” Increased competition is coming to the electric industry, due to the interaction of five key factors:

- **New technologies in energy production, conservation and information systems are creating opportunities for more efficient production, delivery and consumption of electricity.** The most important development in this area has been rapid price reductions associated with the construction of new natural gas-fired turbine and combined cycle plants. This has meant that electricity can be generated at lower cost than at many older and more expensive power plants.
- **Federal laws have been changed to encourage new entrants in electricity generation and to create a competitive wholesale transmission market.** The Public Utility Regulatory Policies Act (PURPA) of 1978 requires utilities to buy power from independent power producers; this law initiated the growth of electricity generation outside the vertically-integrated public utilities. The 1992 Energy Policy Act (EPAct) authorized the Federal Energy Regulatory Commission (FERC) to order transmission-owning utilities to provide transmission service to any buyer or seller of wholesale electricity. Under this authority, FERC has issued a series of decisions designed to create a wholesale market in the sale of electricity.
- **New players are seeking to enter the industry at all levels: wholesale and retail sales, generation, transmission ownership, merchant and aggregation functions, and conservation services.** As these new players see opportunities for competition, they will create a significant political and economic force for change.
- **Industrial customers are insisting on lower rates and higher efficiencies from their utility suppliers, that has led the way in most states for development of a retail market.** These proponents of competition point to the positive benefits from

increased competition in the airline, gas, trucking and telecommunications industries as a rationale for initiating electricity competition. Industrial customers are skilled and sophisticated; they understand the potential advantage in bargaining for their electricity needs in the open market.

■ **Electricity production accounts for over 50% of key air pollution emissions, focusing attention on the industry.**

Policymakers and consumer advocates are looking for the most efficient way to assign risks and costs to the production and use of electricity. The current regulatory structure provides an inherent incentive for electric utilities to increase their sales of kilowatt-hours because most state ratemaking policies encourage utilities to increase their profits by selling more electrons. Such regulatory imperatives, in turn, result in higher air emissions than might otherwise occur in a competitive market, as well as increased air pollution from older power plants which are required to comply with the more stringent emission standards of newer plants.

The call for increased competition in the electric industry has coincided with a push toward privatization in many other countries and with a political desire to decrease our reliance on regulation in favor of more competition in many industries. In the telecommunications industry, for example, Congress enacted the Telecommunications Act of 1996

which, among other requirements: (1) calls for competition in the local provision of telephone service; (2) opens up the previously separated cable and long distance telephone companies to competition from each other; and (3) replaces a long history of state and federal price regulation with calls for market fairness and consumer protection. The push for retail competition in the electric industry has not been far behind.

Twelve state legislatures have already mandated retail competition in their states with implementation dates that vary from 1998-2006 (See Appendix B). Almost every other state has initiated proceedings to examine whether retail competition is either an inevitable or desirable result. In addition, several federal legislative proposals that mandate retail competition are slated for serious attention in the near future.

Proponents of these changes emphasize that lower costs typically result from competitive, as opposed to regulated, markets. They theorize that allowing competition in at least the generation portion of the business will result in lower prices than under the traditional monopoly regulation approach. While it is undeniable that retail competition will create an opportunity for some customers to negotiate for lower prices, consumer advocates question whether this benefit will flow automatically to lower-use residential and small commercial customers in general or low-income customers in particular. These observers point to the airline industry in which

prices have, in fact, dropped for customers who can travel at certain times but significantly increased for business customers traveling at peak days or times. This has come at a cost of reduced service and higher fares for small cities across America. Consumer advocates also point to the recently deregulated telecommunications industry where competition for basic exchange service has appeared in large cities and for large volume users, but not for rural or most residential customers.

As a result of these concerns, the debate about electric competition in many states has included an extensive analysis of the public benefits associated with traditional regulatory structures and efforts to either address those benefits directly in the new industry structure or transfer them to the new competitive retail market. These public benefits include

- conservation and demand-side management initiatives mandated by state policy makers;
- universal service and low-income programs;
- utility-sponsored research and development;
- consumer protection policies and programs associated with the sale of electricity to residential and small commercial customers; and

- support for renewable energy and environmentally beneficial energy sources as embodied in PURPA and least cost planning policies.

Overarching this debate about competing public policies and whether to protect or abandon them is the controversy surrounding “stranded costs.” These costs dwarf those associated with public policy initiatives and may determine whether most customers see any reduction in prices as a result of the move to competition. Stranded costs represent the capital invested by utilities in power plants and power-purchasing contracts that will not be profitable in a competitive market. The difference between what the utilities invested in these plants and contracts and what they are worth on the open market in the next several years is the “stranded” portion of these costs. Utilities want to be reimbursed for these costs as part of the transition to competition. They argue that their shareholders had every reason to expect these costs to be recovered because they were incurred with the knowledge and blessing of state and federal regulators.

Opponents argue that the change to competition will produce winners and losers and that utility shareholders must share in the pain. Some states, like California, Maine, and Massachusetts, are allowing utilities to recover most or all of their stranded costs, but they are requiring them to sell some or all of their power plants. This “divestiture” approach prevents the old monopolies from putting

their new competitors at a disadvantage, because, as continuing owners of the transmission and distribution system, they might give their own power plants special treatment. Divestiture is particularly important because of the increasing number of mergers among utilities in the last several years, which have set the stage for a potential reduction in competition in some regional electricity markets.

Readers interested in a more detailed discussion of the economic and public policy issues associated with the move

to retail electric competition may find additional information from the National Council on Competition and the Electric Industry (NCCEI), a joint project of state utility regulators, through the National Association of Regulatory Utility Commissioners (NARUC), legislators, through the National Conference of State Legislatures (NCSL), and energy officials, through the National Association of State Energy Officials (NASEO). The National Council's website includes links to their publications <http://eetd.lbl.gov/nationalcouncil/>.

APPENDIX B

EXCERPTS FROM STATE ELECTRIC RESTRUCTURING LEGISLATION

AGGREGATION

California Senate Bill 477 (Stats. 1997, ch. 275).

Section 366 is added to the Public Utilities Code to read:

366. (a) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end use customers. Customers shall be entitled to aggregate their electric loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical corporation or its successor in interest.
- (b) Aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited to small commercial or residential customers. Aggregation may be accomplished by private market aggregators, cities, counties, special districts or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers.
- (c) If a public agency seeks to serve as a community aggregator on behalf of residential customers, it shall be obligated to offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

Massachusetts: Chapter 164 of the Acts of 1997, eff. November 25, 1997.

Section 134. (a) Any municipality or any group of municipalities acting together within the commonwealth is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries; provided, however, that such municipality or group of municipalities shall not aggregate electrical load if such are served by an existing municipal lighting plant. Such municipality or group of municipalities may group retail electricity customers to solicit bids, broker, and contract for electric power and energy services for such customers. Such municipality or group of municipalities may enter into agreements for services to facilitate the sale and purchase of electric energy and other related services. Such service agreements may be entered into by a single city, town, county, or by a group of cities, towns, or counties.

A municipality or group of municipalities which aggregates its electrical load and operates pursuant to the provisions of this Section shall not be considered a utility engaging in the wholesale purchase and resale of electric power. Providing electric power or energy services to aggregated customers within a municipality or group of municipalities shall not be considered a wholesale utility transaction. The provision of aggregated electric power and energy services as authorized by this Section shall be regulated by any applicable laws or regulations which govern aggregated electric power and energy services in competitive markets.

A town may initiate a process to aggregate electrical load upon authorization by a majority vote of town meeting or town council. A city may initiate a process to authorize aggregation by a majority vote of the city council, with the approval of the mayor, or the city manager in a Plan D or Plan E city. Two or more municipalities may as a group initiate a process jointly to authorize aggregation by a majority vote of each particular municipality as herein required.

Upon an affirmative vote to initiate said process, a municipality or group of municipalities establishing load aggregation pursuant to this Section shall, in consultation with the division of energy resources, pursuant to Section 6 of Chapter 25A, develop a plan, for review by its citizens, detailing the process and consequences of aggregation. Any municipal load aggregation plan established pursuant to this Section shall provide for universal access, reliability, and equitable treatment of all classes of customers and shall meet any requirements established by law or the department concerning aggregated service. Said plan shall be filed with the department, for its final review and approval, and shall include, without limitation, an organizational structure of the program, its operations, and its funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants; and termination of the program. Prior to its decision, the department shall conduct a public hearing. The department shall not approve any such plan if the price for energy would initially exceed the price of the standard offer, as established pursuant to Section 1B of this chapter, for such citizens in the municipality or group of municipalities, unless the applicant can demonstrate that the price for energy under the aggregation plan will be lower than the standard offer in the subsequent years or the applicant can demonstrate that such excess price is due to the purchase of renewable energy as described by the Division of Energy Resources pursuant to Chapter 25A.

Participation by any retail customer in a municipal or group aggregation program shall be voluntary. If such aggregated entity is not fully operational on the retail access date, any ratepayer to be automatically enrolled therein shall receive standard offer service unless affirmatively electing not to do so. Within 30 days of the date the aggregated entity is fully operational, such ratepayers shall be transferred to the aggregated entity according to an opt-out provision herein. Following adoption of aggregation through the votes specified above, such program shall allow any retail customer to opt-out and choose any supplier or provider such retail customer wishes. Once enrolled in the aggregated entity, any ratepayer choosing to opt-out within 180 days shall do so without penalty and shall be entitled to receive standard offer service as if he was originally enrolled therein. Nothing in this Section shall be construed as authorizing any city or town or any municipal retail load aggregator to restrict the ability of retail electric customers to obtain or receive service from any authorized provider thereof.

It shall be the duty of the aggregated entity to fully inform participating ratepayers in advance of automatic enrollment that they are to be automatically enrolled and that they have the right to opt-out of the aggregated entity without penalty. In addition, such disclosure shall prominently state all charges to be made and shall include full disclosure of the standard offer rate, how to access it, and the fact that it is available to them without penalty. The Division of Energy Resources shall furnish, without charge, to any citizen a list of all other supply options available to them in a meaningful format that shall enable comparison of price and product.

- (b) A municipality or group of municipalities establishing a load aggregation program pursuant

to Subsection (a) may, by a vote of its town meeting or legislative body, whichever is applicable, adopt an energy plan which shall define the manner in which the municipality or municipalities may implement demand side management programs and renewable energy programs that are consistent with any state energy conservation goals developed pursuant to Chapter 25A or Chapter 164. After adoption of the energy plan by such town meeting or other legislative body, the city or town clerk shall submit the plan to the department to certify that it is consistent with any such state energy conservation goals. If the plan is certified by the department, the municipality or group of municipalities may apply to the Massachusetts Technology Park Corporation for monies from the Massachusetts Renewable Energy Trust Fund, established pursuant to Subsection (a) of Chapter 40J, and receive, and if approved, expend moneys from the demand side management system benefit charges or line charges in an amount not to exceed that contributed by retail customers within said municipality or group municipalities. This will not prevent said municipality or municipalities from applying to the Massachusetts Technology Park Corporation for additional funds. If the department determines that the energy plan is not consistent with any such state-wide goals, it shall inform the municipality or group of municipalities within six months by written notice the reasons why it is not consistent with any such state-wide goals. The municipality or group of municipalities may re-apply at anytime with an amended version of the energy plan.

The municipality or group of municipalities shall not be prohibited from proposing for certification an energy plan which is more specific, detailed, or comprehensive or which covers additional subject areas than any such state-wide conservation goals. This subsection shall not prohibit a municipality or group of municipalities from considering, adopting, enforcing, or in any other way administering an energy plan which does not comply with any such state-wide conservation goals so long as it does not violate the laws of the commonwealth.

The municipality or group of municipalities shall, within two years of approval of its plan or such further time as the department may allow, provide written notice to the department that its plan is implemented. The department may revoke certification of the energy plan if the municipality or group of municipalities fails to substantially implement the plan or if it is determined by independent audit that the funds were misspent within the time allowed under this subsection.

CONSUMER PROTECTION POLICIES

California Senate Bill 477 (Stats. 1997, ch. 275).

Sec. 391: The Legislature finds and declares all of the following:

- (a) Electricity is essential to the health, safety, and economic well-being of all California consumers.
- (b) The restructuring of the electricity industry will create a new electricity market with new marketers and sellers offering new goods and services, many of which may not be readily evaluated by the average consumer.
- (c) It is important that these customers be protected from unfair marketing practices and that market participants demonstrate their creditworthiness and technical expertise in order to engage in power sales to these members of the public.

- (d) Larger commercial and industrial customers are sophisticated energy consumers that have adequate civil remedies and are adequately protected by existing commercial law, as demonstrated by the absence of significant amounts of contract litigation between commercial and industrial natural gas users and natural gas marketers in California.
- (e) It is important to create a market structure that will not unduly burden new entrants into the competitive electric market, or California may not receive the full benefits of reduced electricity costs through competition.
- (f) It is appropriate to create a system of registration and consumer protection for the electric industry, designed to ensure sufficient protection for residential and small commercial consumers while simplifying entry into the market for responsible entities serving larger, more sophisticated customers.
- (g) It is the intent of the Legislature that:
 - (1) Electricity consumers be provided with sufficient and reliable information to be able to compare and select among products and services provided in the electricity market.
 - (2) Consumers be provided with mechanisms to protect themselves from marketing practices that are unfair or abusive.
 - (3) Pursuant to the authority granted to the commission in this part as to registration and consumer protection matters, the commission shall balance the need to maximize competition by reducing barriers to entry into the small retail electricity procurement market with the need to protect small consumers against deceptive, unfair, or abusive business practices, or insolvency of the entity offering retail electric service.

CONSUMER EDUCATION

Maine: Public Law 1997, ch 316 (May 29, 1997)

Sec. 35A § 3214: Bill Unbundling; Consumer Education

1. Unbundled bills. Beginning January 1, 1999, electric utilities shall issue bills that state the current cost of electric capacity and energy separately from transmission and distribution charges and other charges for electric service. By January 31, 1998, each electric utility shall file with the commission a bill unbundling proposal. The commission shall complete its review of those proposals and adopt a rule establishing unbundled bill requirements by July 1, 1998. Rules adopted under this subsection are routine technical rules pursuant to Title 5, Chapter 375, subchapter II-A.
2. Consumer education advisory board; rules. The commission shall adopt rules implementing a consumer education program in compliance with this subsection.
 - A. The commission shall immediately organize a consumer education advisory board to investigate and recommend methods to educate the public about the

implementation of retail access and its impact on consumers. The commission shall ensure broad representation of residential, industrial and commercial electric consumers, public agencies and the electric industry on the advisory board. Members of the board shall serve without compensation.

- B. In its recommendations, the advisory board shall address:
 - (1) The level of funding necessary for adequate educational efforts and the appropriate source of that funding;
 - (2) The aspects of retail access on which consumers need education;
 - (3) The most effective means of accomplishing the education of consumers;
 - (4) The appropriate entities to conduct the education effort; and
 - (5) Any other issue relevant to the education of consumers regarding the implementation of retail access and its impact on consumers.
- C. The commission shall consider the recommendations of the advisory board when adopting rules to implement a consumer education program. Rules adopted under this subsection are major substantive rules pursuant to Title 5, Chapter 375, subchapter II-A. The commission shall provide these rules to the Legislature in accordance with Title 5, Chapter 375, subchapter II-A, no later than February 1, 1998.

Nevada: Assembly Bill 366, July 16, 1997.

Sec. 48

- 3. The commission, before the commencement of direct access to alternative sellers for an electric service, shall carry out an educational program for customers to:
 - (a) Inform customers of the changes in the provision of electric service, including, but not limited to, the availability of alternative sellers of electric service;
 - (b) Inform customers of the requirements relating to disclosures, explanations or sales information for sellers of competitive services; and
 - (c) Provide assistance to customers in understanding and using the information to make reasonably informed choices about which service to purchase and from whom to purchase it.

CONSUMER DISCLOSURES

California Senate Bill 477 (Stats. 1997, ch. 275).

Sec. 394.5

- (a) Except for an electrical corporation as defined in Section 218, or a local publicly owned electric utility as defined in subdivision (d) of Section 9604 offering electrical service to residential and small commercial customers within its service territory, each entity offering electrical service to residential and small commercial customers shall, prior to the commencement of service, provide the potential customer with a written notice of the service describing the price, terms, and conditions of the service. The notices shall include all of the following:
- (1) A clear description of the price, terms, and conditions of service, including:
 - (A) The price of electricity expressed in a format which makes it possible for residential and small commercial customers to compare and select among similar products and services on a standard basis. The commission shall adopt rules to implement this subdivision. The commission shall require disclosure of the total price of electricity on a cents-per-kilowatt-hour basis, including the costs of all electric services and charges regulated by the commission. The commission shall also require estimates of the total monthly bill for the electric service at varying consumption levels, including the costs of all electric services and charges regulated by the commission. In determining these rules, the commission may consider alternatives to the cent-per-kilowatt-hour disclosure if other information would provide the customer with sufficient information to compare among alternatives on a standard basis.
 - (B) Separate disclosure of all recurring and nonrecurring charges associated with the sale of electricity.
 - (C) If services other than electricity are offered, an itemization of the services and the charge or charges associated with each.
 - (2) An explanation of the applicability and amount of the competition transition charge, as determined pursuant to Sections 367 to 376, inclusive.
 - (3) A description of the potential customer's right to rescind the contract without fee or penalty as described in Section 395.
 - (4) An explanation of the customer's financial obligations, as well as the procedures regarding past due payments, discontinuance of service, billing disputes, and service complaints.
 - (5) The entity's registration number, if applicable.
 - (6) The right to change service providers upon written notice, including disclosure of any fees or penalties assessed by the supplier for early termination of a contract.
 - (7) A description of the availability of low-income assistance programs for qualified customers and how customers can apply for these programs.

- (b) The commission may assist registered entities in developing the notice. The commission may suggest inclusion of additional information it deems necessary for the consumer protection purposes of this section. On at least a semiannual basis, registered entities shall provide the commission with a copy of the form of notice included in standard service plans made available to residential and small commercial customers as described in subdivision (a) of Section 392.1.
- (c) Any entity offering electric services who declines to provide those services to a consumer shall, upon request of the consumer, disclose to that consumer the reason for the denial in writing within 30 days. At the time service is denied, the entity shall disclose to the consumer his or her right to make such a request. Consumers shall have at least 30 days from the date service is denied to make such a request.

Massachusetts: Chapter 164 of the Acts of 1997, eff. November 25, 1997.

Section 1F

- (5)(i) Before service is initiated by a generation company, aggregator, or supplier to any customer, the generation company, aggregator, or supplier shall disclose information on rates and other information to a customer in a written statement which the customer may retain. The department shall promulgate rules and regulations prescribing the form, content, and distribution of such information to be disclosed, which shall include, but not be limited to, the following: the disclosure of the rate to be charged; whether the generation company or supplier operates under collective bargaining agreements and whether such generation company or supplier operates with employees hired as replacements during the course of a labor dispute; any charges, fees, penalties, or other conditions imposed upon a customer should he or she choose to purchase power from another generation company, aggregator, or supplier during the term specified in the contract; the fuel mix and emissions of the generation sources; whether a credit agency will be contacted; deposit requirements and the interest paid on deposits; due date of bills and all consequences of late payment; consumer rights where a bill is estimated; consumer rights of third-party billing and like arrangements; consumer rights to deferred payment arrangements; low-income rates; limits, if any, on warranty and damages; the applicable provisions of this section; the provisions for default service; a toll-free telephone number for service complaints; any other fees, charges, or penalties; and the methods by which a consumer shall be notified of any changes to any of these items. A generation company, a supplier, or an aggregator licensed by the department to do business in the commonwealth pursuant to this section shall prepare an information booklet describing a customer's rights under the provisions of this chapter. Such company, supplier, or aggregator shall annually mail this booklet to its customers.
- (ii) A generation company, an aggregator, or a supplier shall be allowed to advertise the percentage of its power or energy portfolio that is generated by employers that operate under collective bargaining agreements or that operate with employees hired as replacements during the course of a labor dispute or that connotes or signifies to the ratepayer the relative environmentally beneficial effects of the power or energy sold by said generation company, an aggregator, or a supplier pursuant to rules and regulations promulgated by the department.

- (iii) In addition to the disclosure requirements provided for in Subparagraphs (i) and (ii), the department shall promulgate such rules and regulations prescribing information to be disclosed by a generation company in any advertising or marketing of electricity rates, which regulations shall include, but not be limited to, disclosure of the rate to be charged in bold print in the case of print advertisements or through clear spoken language in the case of television or radio advertisements and on any monthly billing materials. The department shall coordinate with the attorney general to avoid duplication and to ensure consistency with the attorney general's regulations.

- (6) The department shall promulgate uniform labeling regulations which shall be applicable to all suppliers as a condition of licensure pursuant to paragraph (1). Such information to be required by regulation in said labeling shall include price data, information on price variability, and customer service information and information about whether the generation company or supplier operates under collective bargaining agreements and whether such generation company or supplier operates with employees hired as replacements during the course of a labor dispute, fuel sources, and air emissions of sulfur dioxide, nitrogen dioxides, carbon dioxide, heavy metals, and any other emission which the department may determine causes significant health or environmental impact and for which sufficiently accurate and reliable data is available. The department shall require that such an electricity information label provide prospective and existing customers with adequate information by which to readily evaluate power supply options available in the market. Electricity suppliers shall be required to present such information, including information about the environmental characteristics of the sale of electric power products and services and whether the generation company or supplier operates under collective bargaining agreements and whether such generation company or supplier operates with employees hired as replacements during the course of a labor dispute to customers, in conformance with department requirements as to form and substance, and shall comply with federal and state laws governing unfair advertising and labeling.

CONSUMER COMPLAINTS

California Senate Bill 477 (Stats. 1997, ch. 275).

Sec. 392.1

- (a) The commission shall compile and regularly update the following information: names and contact numbers of registered providers, information to assist consumers in making service choices, and the number of customer complaints against specific providers in relation to the number of customers served by those providers and the disposition of those complaints. To facilitate this function, registered entities shall file with the commission information describing the terms and conditions of any standard service plan made available to residential and small commercial customers. The commission shall adopt a standard format for this filing. The commission shall maintain and make generally available a list of entities offering electrical services operating in California. This list shall include all registered providers and those providers not required to be registered who request the commission to be included in the list. The commission shall, upon request, make this information available at no charge. Notwithstanding any other provision of law, public agencies which are registered entities shall be required to disclose their terms and conditions of service contracts only to the same extent that other registered entities

would be required to disclose the same or similar service contracts.

- (b) The commission shall issue public alerts about companies attempting to provide electric service in the state in an unauthorized or fraudulent manner as defined in subdivision (b) of Section 394.25.
- (c) The commission shall direct the Office of Ratepayer Advocates to collect and analyze information provided pursuant to subdivision (a) for purposes of preparing easily understandable informational guides or other tools to help residential and small commercial customers understand how to evaluate competing electric service options. In implementing these provisions, the commission shall direct the Office of Ratepayer Advocates to pay special attention to ensuring that customers, especially those with limited-English-speaking ability or other disadvantages when dealing with marketers, receive correct, reliable, and easily understood information to help them make informed choices. The Office of Ratepayer Advocates shall not make specific recommendations or rank the relative attractiveness of specific service offerings of registered providers of electric services.

LICENSING:

California Senate Bill 477 (Stats. 1997, ch. 275).

Sec. 394.25

- (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against registered entities as if those entities were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section shall grant the commission jurisdiction to regulate registered entities other than as specifically set forth in this part. Registered entities shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the entity has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the entity in writing and notice an expedited hearing on the suspension or revocation of the entity's registration to be held within 30 days of the notification to the entity of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.
- (b) A registered entity may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:
 - (1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.
 - (2) Dishonesty, fraud, or deceit with the intent to substantially benefit the registered entity or its employees, agents, or representatives, or to disadvantage retail

electric customers.

- (3) Where the commission finds that there is evidence that the entity is not financially or operationally capable of providing the offered electric service.

- (c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers.

Any suspension or revocation of a registration shall require the entity to cease serving customers within the boundaries of investor-owned electric corporations, and the affected customers shall be served by the electrical corporation until such time as they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any entity under the service agreement in the event the serving electric service provider's registration is suspended or revoked.

Maine Public Law 1997, ch 316 (May 29, 1997)

Sec. 35A § 3203: Licensing of competitive electricity providers; consumer protections; enforcement

1. Authority. In order to provide effective competition in the market for the generation and sale of electricity in the State and to provide an orderly transition from the current form of regulation to retail access, the commission shall license competitive electricity providers in accordance with this section.
2. Requirements. A competitive electricity provider may not undertake the sale of electricity at retail in this State without first receiving a license from the commission. Before approving a license application, the commission must receive from the applicant:
 - A. Evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason;
 - B. Evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities;
 - C. Disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the commission in the 12 months prior to the date of license application;
 - D. Evidence of the ability to satisfy the renewable resource portfolio requirement established under Section 3210; and
 - E. Disclosure of the names and corporate addresses of all affiliates of the applicant.

The commission shall consider the need for requiring and, if it determines there is a need, may require a competitive electricity provider to file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service.

3. Informational filings; public information. The commission shall establish by rule information disclosure and filing requirements for competitive electricity providers. The rules must require generation providers to file their generally available rates, terms and conditions with the commission. The commission, subject to appropriate protective orders, may require the submission of individual service contracts or any other confidential information from a competitive electricity provider.

The commission by rule shall establish standards for publishing and disseminating, through any means considered appropriate, information that enhances consumers' ability to effectively make choices in a competitive electricity market.

Rules adopted under this subsection are major substantive rules as defined in Title 5, Chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

4. Standard consumer protection provisions. As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a customer, wherever located, with a demand of 100 kilowatts or less:
 - A. May not terminate generation service without at least 30 day prior notice to the customer;
 - B. Must offer service to the customer for a minimum period of 30 days;
 - C. Must allow the customer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection;
 - D. May not telemarket services to the customer if the customer has filed with the commission a written request not to receive telemarketing from competitive electricity providers;
 - E. Must provide to the customer within 30 days of contracting for retail service a disclosure of information provided to the commission pursuant to rules adopted under Subsection 3 in a standard written format established by the commission; and
 - F. Must comply with any other provisions adopted by the commission by rule or order.
5. Licensing renewals and revocations. Consistent with all applicable requirements of Title 5, Chapter 375, the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.
6. Consumer protection standards; rules. The commission shall establish by rule consumer protection standards and standards to protect and promote market competition in order to protect retail consumers of electricity from fraud and other unfair and deceptive

business practices.

7. Penalties. In an adjudicatory proceeding, the commission may impose a penalty of up to \$5,000 for each violation of this section or any consumer protection rule adopted under this section. Each day a violation continues constitutes a separate offense. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under Section 117.
8. Dispute resolution. The commission shall resolve disputes between competitive electricity providers and retail consumers of electricity concerning standards established pursuant to Subsection 6.
9. Additional actions. The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider.
10. Cease and desist orders. The commission may issue a cease and desist order:
 - A. Following an adjudicatory hearing held in conformance with Title 5, Chapter 375, subchapter IV, if the commission finds that any competitive electricity provider or transmission and distribution utility has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the commission or any lawful order issued by the commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to Title 5, Section 11004; or
 - B. In an emergency, without hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider or a transmission and distribution utility is selling electricity to retail consumers without being duly licensed or is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues in force and effect until further order of the commission or until stayed by a court of competent jurisdiction. In a subsequent hearing the commission shall in a final order affirm, modify or set aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the commission.
11. Restitution. The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.
12. Enforcement. The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it.
13. Notice to Attorney General. If the commission has reason to believe that any competitive electricity provider or transmission and distribution utility has violated any provision of law

for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

14. Disconnection restricted. A transmission and distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under Section 3212.
15. Standard billing. The commission shall consider requiring standard billing information on bills for electric power service. If standard billing information is required, the commission shall investigate the possibility of adopting standards consistent with other New England states. The commission may not prohibit transmission and distribution utilities from contracting with generation service providers to include both entities' charges on a single bill. The commission may not preclude the inclusion of other information on bills for electric power service.
16. Access to load data. Upon request from a competitive electricity provider, the commission shall provide load data on a class basis that is in the possession of a transmission and distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.
17. Rules. Except as otherwise provided in this section, rules adopted pursuant to this section are routine technical rules as defined by Title 5, Chapter 375, subchapter II-A.

Massachusetts: Chapter 164 of the Acts of 1997, eff. November 25, 1997.

Section 1F

The department shall promulgate rules and regulations to provide retail customers with the utmost consumer protections contained in law, including, but not limited to, the following provisions:

- (1) The department shall license to do business in the commonwealth all generation companies, aggregators, suppliers, energy marketers, and energy brokers in accordance with the provisions of Subparagraphs (i), (ii), and (iii). The department shall maintain a list of all licensed generation companies, aggregators, energy brokers, energy marketers, and suppliers, which shall be available to any consumer requesting such information through the department for a reasonable fee.
 - (i) All generation companies shall submit a license application to the department for approval to sell electric power or provide generation services within the commonwealth. Such application shall include the following: the company's technical ability, as defined pursuant to regulations promulgated by the department, to generate or otherwise obtain and deliver electricity and provide any other proposed services; documentation of financial capability of the applicant to provide the proposed services; a description of the company's form of ownership; and documentation regarding any valid purchase power contracts between the company, the company's affiliates, or the company's parent or subsidiary, and any electric company formed pursuant to the provisions of this

chapter. A license shall not be granted unless and until all of the above information is provided with the payment of a fee, the amount to be determined by the department.

- (ii) All private, non-profit, or co-operative aggregators established pursuant to Sections 135 and 136 seeking to do business in the commonwealth shall submit a license application to the department, subject to rules and regulations promulgated by the department and subject to the payment of a fee, the amount to be determined by the department.
- (iii) All energy brokers, energy marketers, and other suppliers seeking to do business in the commonwealth shall submit a license application to the department, subject to rules and regulations promulgated by the department and subject to the payment of a fee, the amount to be determined by the department.

Montana Senate Bill 390, Amending Title 69, Montana Code Annotated
(Eff. May 2, 1997)

25-8-404. Licensing.

- (1) Except as provided in 69-8-311, an electricity supplier shall file an application with and obtain a license from the commission before offering electricity for sale to retail customers in the state of Montana.
- (2) As a condition of licensing, an electricity supplier shall identify and describe its activities and purposes and the purposes of each of the electricity supplier's affiliates, if any, including whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair, and nondiscriminatory access to the electricity supplier's or the electricity supplier's affiliates distribution facilities.
- (3) The commission may require electricity suppliers that provide electricity supply service to small customers to make a standard service offer that ensures that those customers have access to affordable electricity.
- (4) The commission may require:
 - (a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to obtain those reserves; and
 - (b) a licensee to post a bond should an electricity supplier fail to supply electricity or lack financial integrity.
- (5) An electricity supplier shall provide the commission and all distribution services providers with copies of all license applications pursuant to Subsection (2). Licensees shall update information and file annual reports with the commission and all distribution services providers.
- (6) License applications are effective 30 days after filing with the commission unless the commission rejects the application during that period. If the commission rejects a license application, the commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome deficiencies.

- (7) Notwithstanding this chapter, a cooperative utility is not required to apply for a license from the commission to be an electricity supplier to customers served by that cooperative utility in its electric facilities service territory or to any customers served by another cooperative utility subject to the consent of the other cooperative utility's local governing body.

69-8-408. Penalties — license revocation.

- (1) The commission may begin a proceeding to revoke or suspend a license of an electricity supplier, impose a penalty, or both, for just cause on the commission's own investigation or upon the complaint of an affected party if it is established that the electricity supplier:
 - (a) intentionally provided false information to the commission;
 - (b) switched, or caused to be switched, the electricity supply for a customer without first obtaining the customer's written permission;
 - (c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; or
 - (d) committed fraud or engaged in deceptive practices.
- (2) Any person selling or offering to sell electricity in this state in violation of 69-8-404, 69-8-410, and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license revocation or suspension. Each day of each violation constitutes a separate violation.
- (3) The fine must be recovered in a civil action upon the complaint by the commission in any court of competent jurisdiction.
- (4) A license revocation proceeding under this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act, Title 2, Chapter 4, part 6.

LOW INCOME PROGRAMS

Maine: Public Law 1997, ch 316 (May 29, 1997)

35A § 3214. Needs-Based Low-income Assistance

1. Policy. In order to meet legitimate needs of electricity consumers who are unable to pay their electricity bills in full and who satisfy eligibility criteria for assistance, and recognizing that electricity is a basic necessity to which all residents of the State should have access, it is the policy of the State to ensure adequate provision of financial assistance.
2. Low-income assistance. In order to continue existing levels of financial assistance for low-income households and to meet future increases in need caused by economic exigencies, the commission shall:
 - A. Receive funds collected by all transmission and distribution utilities in the State at a rate set by the commission in periodic rate cases; and

- B. Set initial funding for programs based on an assessment of aggregate customer need in periodic rate cases. The funding formula may not result in assistance being counted as income or as a resource in other means-tested assistance programs for low-income households. To the extent possible, assistance must be provided in a manner most likely to prevent the loss of other federal assistance.
3. Special rate. Nothing in this section may be construed to prohibit a transmission and distribution utility from offering any special rate or program for low-income customers that is not in effect as of the effective date of this chapter, subject to the approval of the commission.
4. Financial support. If the Legislature appropriates from the General Fund financial support for households and individuals receiving assistance under this section, the commission may not terminate the assistance provided by transmission and distribution utilities unless the General Fund source has completely replaced such assistance. The commission may adjust the assistance provided pursuant to this section based on the amount of any financial support from the General Fund and may reinstitute assistance subsequent to any termination of assistance if the commission finds that the General Fund source no longer completely replaces such assistance.

Massachusetts: Chapter 164 of the Acts of 1997, eff. November 25, 1997.

Section 1F

- (4)(i) The department shall require that distribution companies provide discounted rates for low income customers comparable to the low-income discount rate in effect prior to March 1, 1998. Said discount shall be in addition to any reduction in rates that becomes effective pursuant to said Subsection (b) of said Section 1B on March 1, 1998, and to any subsequent rate reductions provided by a distribution company after said date pursuant to said subsection. The cost of such discounts shall be included in the rates charged to all other customers of a distribution company. Each distribution company shall guarantee payment to the generation supplier for all power sold to low-income customers at said discounted rates. Eligibility for the discount rates established herein shall be established upon verification of a low-income customer's receipt of any means tested public benefit, or verification of eligibility for the low-income home energy assistance program, or its successor program, for which eligibility does not exceed 175 per cent of the federal poverty level based on a household's gross income. Said public benefits may include, but are not limited to, assistance which provides cash, housing, food, or medical care, including, but not limited to, transitional assistance for needy families, supplemental security income, emergency assistance to elders, disabled, and children, food stamps, public housing, federally-subsidized or state-subsidized housing, the low-income home energy assistance program, veterans' benefits, and similar benefits. The Division of Energy Resources shall make available to distribution companies the eligibility guidelines for said public benefit programs. Each distribution company shall conduct substantial outreach efforts to make said low-income discount available to eligible customers and shall report to said division, at least annually, as to its outreach activities and results. Outreach may include establishing an automated program of matching customer accounts with lists of recipients of said means tested public benefit programs and based on the results of said matching program, to presumptively offer a low-income discount rate to eligible customers so identified; provided, however, that the distribution company, within 60 days of said presumptive enrollment, informs any such low-income customer of said presumptive

enrollment and all rights and obligations of a customer under said program, including the right to withdraw from said program without penalty.

Not later than March 1, 1999 the department shall conduct an investigation and report to the joint committee on government regulations regarding the cost and benefits of expanding eligibility for the discount rates established in clause (i) of Subparagraph (4) of the first paragraph of Section 1F to any low-income customer who is eligible for any means tested public benefit for which eligibility does not exceed 175 per cent of the federal poverty level based on gross household income. The department shall further provide to said committee any legislative recommendations necessary to implement this section.

- (ii) Prior to the termination of the seven year period of the standard service transition rate, the department shall, in consultation with said division, evaluate the effects of electricity restructuring on the affordability of electric power for low-income customers. The department shall make recommendations to the general court relative to the continuation of the low-income discount rate authorized pursuant to this subsection or to make modifications thereto. The department shall, in its recommendations, consider whether or not to modify said discount by establishing a sliding scale low-income discount program.
- (iii) A residential customer eligible for low-income discount rates shall receive the service on demand and may return to standard offer service at any time including from default service. Each distribution company shall periodically notify all customers of the availability of and method of obtaining low-income discount rates and standard offer service. An existing residential customer eligible for low-income discount on the date of start of retail access who orders service for the first time from a distribution company shall be offered standard offer service by that distribution company. A residential customer eligible for low-income discount receiving standard offer service shall be allowed to retain standard offer service upon moving within the service territory of a distribution company.
- (iv) There shall be no charge to any residential customer for initiating or terminating low-income discount rates, default service, or standard offer service when said initiation or termination request is made after a regular meter reading has occurred and the customer is in receipt of the results of said reading. A distribution company may impose a reasonable charge, as set by the department through regulation, for initiating or terminating low-income discount rates, default service, or standard offer service when a customer does not make such an initiation or termination request upon the receipt of said results and prior to the receipt of the next regularly scheduled meter reading. For purposes of this subsection, there shall be a regular meter reading conducted of every residential account no less often than once every two months. Notwithstanding the foregoing, there shall be no charge when the initiation or termination is involuntary on the part of the customer.

Montana Senate Bill 390, Amending Title 69, Montana Code Annotated
(Eff. May 2, 1997)

28) "Universal system benefits programs" means public purpose programs for:

- (a) cost-effective local energy conservation;
- (b) low-income customer weatherization;
- (c) renewable resource projects and applications, including those that capture unique social and energy system benefits or provide transmission and distribution system benefits;
- (d) research and development programs related to energy conservation and renewables;
- (e) market transformation designed to encourage competitive markets for public purpose programs; and
- (f) low-income energy assistance.

69-8-402. Universal system benefits programs.

- (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.
- (2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. Unless modified as provided in Subsection (7), this funding level remains in effect until July 1, 2003.
 - (a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.
 - (b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for customers' programs or activities as provided in Subsection (7).
 - (c) A utility at which the sale of power for final end-use occurs is the utility that receives credit for the universal system benefits program expenditure.
 - (d) For a utility to receive credit for low-income related expenditures, the activity must have taken place in Montana.
 - (e) If a utility's or a customer's credit for internal activities does not satisfy the annual funding provisions of Subsection (2), then the utility shall make a payment to the

universal system benefits fund for any difference.

- (3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.
- (4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.
- (5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.
 - (a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.
 - (b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal energy assistance fund.
- (6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.
- (7)
 - (a) A customer with loads greater than 1,000 kilowatts shall:
 - (i) pay a universal system benefits program charge equal to the lesser of:
 - (A) \$500,000 less the customer credits provided for in this Subsection (7); or
 - (B) the product of 0.9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases, less customer credits provided for in this Subsection (7);
 - (ii) receive credit toward that customer's annual universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits program expenditure and these internal expenditures must include but not be limited to:
 - (A) expenditures that result in a reduction in the consumption of electrical energy in the customer's facility; and
 - (B) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.
 - (b) Customers making these expenditures must receive a credit against the customer's annual universal system benefits charge, except that any of those amounts expended in a

calendar year that exceed that customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that customer's universal system benefits charges.

PERFORMANCE-BASED REGULATION AND SERVICE QUALITY

Massachusetts: Chapter 164 of the Acts of 1997, eff. November 25, 1997.

Section 1E

- (a) The department is hereby authorized to promulgate rules and regulations to establish and require performance based rates for each distribution, transmission, and gas company organized and doing business in the commonwealth pursuant to the provisions of this chapter. In promulgating such performance based rate schemes, the department shall establish service quality standards each distribution, transmission, and gas company, including, but not limited to, standards for customer satisfaction service outages, distribution facility upgrades, repairs and maintenance, telephone service, billing service, and public safety provided, however, that such service quality standards shall include benchmarks for employee staff levels and employee training programs for each such distribution, transmission, and gas company.
- (b) In complying with the service quality standards and employee benchmarks established pursuant to this section, a distribution, transmission, or gas company that makes a performance based rating filing after the effective date of this act shall not be allowed to engage in labor displacement or reductions below staffing levels in existence on November 1, 1997, unless such are part of a collective bargaining agreement or agreements between such company and the applicable organization or organizations representing such workers, or with the approval of the department following an evidentiary hearing at which the burden shall be upon the company to demonstrate that such staffing reductions shall not adversely disrupt service quality standards as established by the department herein. Nothing in this paragraph shall prevent reduction of forces below the November 1, 1997 level through early retirement and severances negotiated with labor organizations before said date.
- (c) Each distribution, transmission, and gas company shall file a report with the department by March first of each year comparing its performance during the previous calendar year to the department's service quality standards and any applicable national standards as may be adopted by the department. The department shall be authorized to levy a penalty against any distribution, transmission, or gas company which fails to meet the service quality standards in an amount up to and including the equivalent of 2 per cent of such company's transmission and distribution service revenues for the previous calendar year.
- (d) The department is authorized and directed to promulgate regulations relative to an alternative dispute resolution process for the handling of damage claims by customers in an amount under \$100. The department shall establish a 60 day timeline for the resolution of all mediation claims. The department shall issue a biannual report to the house and senate clerks and the joint committee on government regulations which shall include, but not be limited to, the following information: nature of consumer claims, number of consumer claims and resolutions of consumer claims reviewed by the department during

the previous six months. Said report shall be available for public review at the department.

SLAMMING

California Senate Bill 477 (Stats. 1997, ch. 275).

Section 366.5 is added to the Public Utilities Code, to read:

- (a) No change in the aggregator or supplier of electric power for any small commercial customer may be made until one of the following means of confirming the change has been completed.
 - (1) Independent third-party telephone verification.
 - (2) Receipt of a written confirmation received in the mail from the consumer after the consumer has received an information package confirming the agreement.
 - (3) The customer signs a document fully explaining the nature and effect of the change in service.
 - (4) The customer's consent is obtained through electronic means, including but not limited to, computer transactions.
- (b) No change in the aggregator or provider of electric power for any residential customer may be made until the change has been confirmed by an independent third-party verification company, as follows:
 - (1) The third-party verification company shall meet each of the following criteria:
 - (A) Be independent from the entity that seeks to provide the new service.
 - (B) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by an entity that seeks to provide the new service or by any corporation, firm, or person who directly or indirectly manages, controls, or directs, or owns more than 5 percent of the entity.
 - (C) Operate from facilities physically separate from those of the entity that seeks to provide the new service.
 - (D) Not derive commission or compensation based upon the number of sales confirmed.
 - (2) The entity seeking to verify the sale shall do so by connecting the resident by telephone to the third-party verification company or by arranging for the third-party verification company to call the customer to confirm the sale.
 - (3) The third-party verification company shall obtain the customer's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the customer upon request.

Information obtained from the customer through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved resident against the entity or its employees who are responsible for the violation.

- (4) Notwithstanding paragraphs (1), (2), and (3), an aggregator or provider of electric power shall not be required to comply with these provisions when the customer directly calls an aggregator or provider of electric power to change service providers. However, an aggregator or provider of electric power shall not avoid the verification requirements by asking a customer to contact an aggregator or provider of electric power directly to make any change in the service provider.
- (c) Any aggregator or provider of electric power offering electricity service to residential and small commercial customers that violates the verification procedures described in this section shall be liable to the aggregator or provider of electric power offering electricity services previously selected by the customer in an amount equal to all charges paid by the customer after the violation.
- (d) A change in provider of electric power by an aggregator is not a change in provider of electric power for purposes of this section.
- (e) Public agencies are exempt from this section to the extent they are serving customers within their jurisdiction.
- (f) An electrical corporation is exempt from this section for customers which default to the service of the electrical corporation.

Massachusetts: Chapter 164 of the Acts of 1997, eff. November 25, 1997.

Section 1F.

(8)(a)

Each customer choosing a generation company or its affiliate, subsidiary, or parent company, or a supplier or aggregator shall be required to affirmatively choose such entity. It shall be unlawful for a generation company, supplier, or aggregator to provide power or other services to such a customer without first obtaining said affirmative choice from the customer. For the purposes of this section, the term "affirmative choice" shall mean the signing of a letter of authorization, third party verification, or the completion of a toll-free call made by the customer to an independent third party operating in a location physically separate from the telemarketing representative who has obtained the customer's initial oral authorization to change to a new electricity provider. For the purposes of this section, the term "third party verification" shall mean an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative who has obtained the customer's oral authorization to change to a new electricity service provider, such authorization to include appropriate verification data, such as the customer's date of birth and social security number; provided, however, any such information or data in the possession of the third party verifier or the marketing company shall not be used, in any instance, for commercial or other marketing purposes, and shall not be sold, delivered, or shared with any other party for such purposes. Such authorization shall include appropriate verification data, such as the customer's date of birth and social security number; provided, however, any information or data in

possession of the independent third party verifier or the marketing company shall not be used, in any instance, for commercial or other marketing purposes, and shall not be sold, delivered, or shared with any other party for such purposes.

For the purposes of this section, the term “letter of authorization” shall mean,

- (i) a separate document, an easily separable document containing only the authorizing language described in paragraph (d), whose sole purpose is to authorize a generation company, aggregator, or supplier to initiate a primary generation company, aggregator, or supplier change. The letter of authorization must be signed and dated by the consumer requesting the primary generation company, aggregator, or supplier change.
- (ii) The letter of authorization shall not be combined with inducements of any kind on the same document.
- (iii) At a minimum, the letter of authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:
 - (1) The consumer’s billing name and address;
 - (2) The decision to change electricity service from the current generation company, aggregator, or supplier to the prospective generation company, aggregator or supplier;
 - (3) That the consumer understands that only one generation company, aggregator, or supplier may be designated as the consumer’s electric company; and
 - (4) That the consumer understands that any primary generation company, aggregator, or supplier selection the consumer chooses may involve a charge to the consumer for changing the consumer’s primary generation company, aggregator, or supplier.
- (iv) Letters of authorization shall not suggest or require that a consumer take some action in order to retain the consumer’s current generation company, aggregator, or supplier.
- (v) If any portion of a letter of authorization is translated into another language, then all portions of the letter of authorization must be translated into that language.

Each customer choosing a generation company or its affiliate, subsidiary, or parent company, a supplier or aggregator shall have the right to rescind, without charge or penalty, his or her choice of generation company, aggregator, or supplier no later than midnight on the third day following the customer’s receipt of a written confirmation of an agreement to purchase electricity. Upon the switching of a customer’s service provider, there shall be included in the customer’s first bill an acknowledgment to be completed by the customer agreeing to the service switch. Such bill shall also include all information mandated under clause (i) of Subparagraph (5).

Each customer choosing a generation company or its affiliate subsidiary, or parent company, a supplier or aggregator shall have the right to rescind, without charge or penalty, the choice of generation company, aggregator, or supplier no later than midnight on the third day following the customer's receipt of a written confirmation of an agreement to purchase electricity and a statement of the terms and conditions of service as described in Subsection (5)(i). Upon switching of a customer's service provider, there shall be included in the customer's bill for distribution service an acknowledgment of the service switch, along with information on how to file a complaint regarding an unauthorized switch.

- (b) A customer may initiate a complaint that his retail electricity service has been switched by or to another service provider without his prior authorization. Said complainant shall file the complaint with the department within 30 days after the statement date of the notice indicating that the customer's retail electricity service has been switched. The department shall, within 10 business days of receiving the complaint, request from the customer a copy of the customer's electricity bill, the name of the original service provider, the name of the new service provider, and any other information the department may deem relevant. The customer shall, within 15 business days of the department's notifying the customer, submit to the department the requested information. Within 15 business days of receiving the request of information from the customer, the department shall send
 - (i) to the customer, a letter acknowledging receipt of the information;
 - (ii) to the original service provider, a letter informing it of the pending complaint and requesting it to provide information relevant to the service switch; and
 - (iii) to the new service provider, a letter informing it of the pending complaint, requesting the proof of the customer's affirmative choice to switch his service provider, and requesting it to provide other information the department deems relevant. The original service provider and the new service provider shall, within five business days of the department's request, return the requested information to the department. Within 25 business days after receiving a copy of the customer's third party verification and all relevant information as required herein, the department shall determine if the customer authorized the new service provider to switch the customer's service.
- (c) If the department determines that the new service provider does not possess the required proof of the customer's affirmative choice, the department shall calculate and require the new service provider to refund the following: (i) to the customer, the difference between what the customer would have paid to the previous service provider and actual charges paid to the new service provider; (ii) to the customer, any reasonable expense the customer incurred in switching back to the original service provider; and (iii) to the original service provider, any lost revenue, which shall consist of the amount of money the original service provider would have received for the service used by the customer during the time the customer received services from the new service provider if the customer's service had not been switched. This amount shall gross, irrespective of expenses, what the original service provider would have reasonably incurred providing the services to the customer. The department shall promulgate rules and regulations for the implementation of this subsection.

- (d) Any generation company, supplier, or aggregator determined by the department to have switched any customer's service provider without proper authorization from the customer one or more times in a 12 month period shall be subject to a civil penalty not to exceed \$1,000 for the first offense and not less than \$2,000 nor more than \$3,000 for any subsequent offense per customer. In determining the amount of the civil penalty, the department shall consider the nature, circumstances, and gravity of the violation, the degree of the respondent's culpability, and the respondent's history of prior offenses.
- (e) Any generation company, supplier, or aggregator determined to have switched any customer's service provider without proper authorization more than 20 times in a 12 month period may, after a full hearing and determination by the department that such generation company supplier or aggregator intentionally, maliciously or fraudulently switched the service or more than 20 customers in a 12 month period, be prohibited from selling electricity in the commonwealth for a period of up to one year. In determining the length of suspension, the department shall consider the nature, circumstances and gravity of each violation and the degree of the culpability of the generation company, supplier or aggregator.
- (f) The department shall track instances in which a generation company, supplier, or aggregator switched a customer's electricity service without the customer's prior authorization. The department shall keep a record of all unauthorized switches which occurred during a calendar year. Beginning with calendar year 1999, the department shall, by March 31 of each year, file an annual report with the joint committee on government regulations and the house and senate committees on ways and means detailing the total number of unauthorized switches, enforcement procedures undertaken by the department against such slamming tactics, so-called, the total amount of dollars returned to customers, the total amount of dollars collected in civil penalties pursuant to Subsection (c), and the overall impact of the provisions of this section.

STANDARD OFFER/DEFAULT SERVICE

Maine: Public Law 1997, ch 316 (May 29, 1997)

Sec. 35A § 3214

When retail access begins, the commission shall ensure that standard-offer service is available to all consumers of electricity.

1. Establishment of terms and conditions. The commission shall open a rule-making proceeding no later than October 1, 1997 to establish terms and conditions for standard-offer service that include, but are not limited to:
 - A. Entry and exit restrictions;
 - B. Protection against a standard-offer service provider's failure to provide service as contracted for;
 - C. Appropriate rate design issues;
 - D. Retaining averaged prices for all customers in the same class; and

E. Credit, collection and disconnection practices.

By February 15, 1998, the commission shall provisionally adopt rules establishing terms and conditions for standard-offer service. Rules adopted under this Subsection are major substantive rules pursuant to Title 5, Chapter 375, subchapter II-A.

2. Selection of standard-offer service providers. After terms and conditions for standard-offer service have been established under Subsection 1, the commission shall administer a bid process to select a standard-offer service provider for that transmission and distribution utility's service territory. By July 1, 1999, the commission shall review the bid submissions for each transmission and distribution utility and select the standard-offer service provider or providers for that utility's service territory.

A. The commission shall determine the general credit data and specific information from general load and usage data that transmission and distribution utilities must provide to potential standard-offer service bidders, including, but not limited to, monthly demand and energy consumption and the number of customers in each customer class. The commission shall ensure that individual customer confidentiality is preserved in this process and that a transmission and distribution utility releases customer-specific data only with the customer's permission. If the transmission and distribution utility incurs additional costs to develop and produce the required data, the commission shall permit that utility to recover those costs through transmission and distribution rates.

B. The commission shall establish the maximum duration of a standard-offer service contract after considering all relevant factors, including, but not limited to, market risks and the need for price stability and contract flexibility.

C. A competitive electricity provider that is an affiliate of a large investor-owned transmission and distribution utility may submit bids to provide standard-offer service for up to 20% of the electric load within the service territory of the large investor-owned transmission and distribution utility with which it is affiliated. To prevent the unfair use of information possessed by a large investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.

D. A consumer-owned transmission and distribution utility and a small investor-owned transmission and distribution utility may submit bids to provide standard-offer service for that utility's service territory. To prevent the unfair use of information possessed by a consumer-owned transmission and distribution utility or a small investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.

By February 15, 1998, the commission shall provisionally adopt rules establishing a methodology for structuring the bidding process for standard-offer service in order to implement the provisions of this subsection. In adopting rules, the commission shall consider methods to ensure, to the extent possible, at least 3 providers of standard-offer service in each transmission and distribution utility service territory, as long as the method does not result in any significant adverse

impacts on rates paid by consumers. Rules adopted under this subsection are major substantive rules pursuant to Title 5, Chapter 375, subchapter II-A.

3. Price cap; investigation. If the qualifying bids under Subsection 2 for standard-offer service in any service territory, when combined with the regulated rates of transmission and distribution service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission shall investigate whether the implementation of retail access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place. Pursuant to Section 3217, the commission shall notify the Legislature of the results of its investigation and its determination.
4. Implementation period. Standard-offer service must be available until March 1, 2005. By January 1, 2004, the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and in the public interest. The commission shall conclude the investigation by June 30, 2004 and report its results to the Legislature pursuant to Section 3217.
5. Territorial and rate class application. Nothing in this section precludes the commission from permitting or requiring different terms and conditions for standard-offer service in different utility service territories or for different customer classes.

Nevada: Assembly Bill 366, July 16, 1997.

Sec. 45.

1. The commission shall designate a vertically integrated electric utility to provide electric service to customers who are unable to obtain electric service from an alternative seller or who fail to select an alternative seller. The provider so designated by the commission is obligated to provide electric service to the customers. Electric service provided by the utility pursuant to this section shall be deemed to be a noncompetitive service for which the utility may recover its costs pursuant to NRS 704.001 to 704.655, inclusive, 704.701 to 704.751, inclusive, 704.800 to 704.900, inclusive.
2. Upon a finding by the commission that the public interest will be promoted, the commission may prescribe alternate methods for providing electric service to those customers described in Subsection 1. The alternate methods may include, but are not limited to, the direct assignment of customers to alternative sellers or electric distribution utilities or a process of competitive bidding for the right to provide electric service to the designated customers.
3. The commission shall establish minimum terms and conditions under which electric service must be provided pursuant to this section, including a minimum period during which a customer must be obligated to pay for the electric service from the assigned provider. The price charged for electric service for a particular group of customers must reflect the incremental cost of serving the group.
4. If the designated provider of the electric service is a vertically integrated electric utility, the utility shall provide the electric service through an affiliate whose sole business activity is the provision of electric service.

5. Except as otherwise provided in this Subsection and Subsection 6, the rate charged for residential service provided pursuant to Subsection 1 must not exceed the rate charged for that service on July 1, 1997. The limitation set forth in this subsection is effective until 2 years after the date upon which, in accordance with Section 39 of this act, the commission repeals the regulations which established the pricing method for that service and the terms and conditions for providing that service.
6. The commission may, in accordance with NRS 704.110, 704.120 and 704.130, approve an increase in the rate charged for residential service provided pursuant to Subsection 1 in an amount that does not exceed the increase necessitated, if any, to ensure the recovery by the vertically integrated electric utility of its just and reasonable costs. The provisions of this section do not limit or prohibit in any manner the operation of any order issued by the commission before July 1, 1997.

APPENDIX C

NATIONAL COUNCIL PUBLICATIONS ON ELECTRIC INDUSTRY RESTRUCTURING

Research Reports

Federal, State, and Local Tax Implications of Electric Industry Restructuring (Deloitte & Touche, 1996)

Assessing Impacts of Restructuring on Small Business, Residential, and Low-Income Customers (Roger D. Colton, 1996)

The Unintended Impacts of Restructuring (Dave Schoengold, 1996)

The Organization of Competitive Wholesale Power Markets and Spot Price Pools (Paul A. Centolella, 1996)

Stranded Benefits in Electric Utilities Restructuring (Nancy Brockway & Michael Sherman, 1996)

The British Electric Utility Restructuring Experience: History and Lessons for the U.S. (Michael C. Brower, Stephen D. Thomas, & Catherine Mitchell, 1996)

Regulation and Competition Without Privatization: Norway's Experience (Jan Moen & Jan Hamrin, Printed in *The Electricity Journal*, March 1996)

Public-Interest Research and Development in the Electric and Gas Utility Industries (Carl Blumstein, Richard Scheer, and Stephen Wiel, 1998)

Briefing Papers

Customer Choice (Cheryl Harrington, 1996)

Electric Utility Transition Costs (Eric Hirst & Lester Baxter, 1996)

Market Power in the Electric Utility Industry; An Overview (William Shepherd, 1997)

Restructuring Issues Associated with Nuclear Power Plants (William B. Marcus, 1997)

Regional issues in Restructuring the Electric Industry (Sue Tierney, 1998)

Disclosure Series

Full Environmental Disclosure for Electricity: Tracking and Reporting Key Information (David Moskovitz et al., July 1997)

Information Disclosure for Electricity Sales: Consumer Preferences from Focus Groups (Alan S. Levy et al., July 1997)

Disclosure of Fuel Mix and Emissions by Retail Electric Service Providers: Issues of Confidentiality vs. Public Right to Know (Scott Hempling, July 1997)

Information Disclosure for Electricity Sales: Consumer Preferences from Focus Groups, Report 2 -- West Coast (Mario Teisl et al., 1997)

Information Disclosure for Electricity Sales: Consumer Preferences from Focus Groups, Report 3-- Rocky Mountain West (Lynn Halverson & Edward Holt, 1997)

Uniform Consumer Disclosure Standards for New England: Report and Recommendations to the New England Utility Regulatory Commissions (Tom Austin et al., January 1998)

Information Consumers Want in Electricity Choice: Summary of Focus Group Research (Edward Holt, January 1998)

Summary Report: Baseline Survey — Consumer Knowledge, Practices, and Attitudes: Electric Utility Deregulation and Consumer Choice (Kenneth Winneg, et al., January 1998)

Model Electricity Consumer Protection Disclosures (Jerrold Oppenheim & Barbara Alexander, April 1998)

Label Testing: Results of Mall Intercept Study (Kenneth Winneg, et al., April 1998)

Other

Council Design Criteria List
(Jan Hamrin, 1995)

Six Generic Restructuring Models
(Jan Hamrin, 1995)

A Glossary of Restructuring Terms
(Jan Hamrin, 1995)

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