

**KEY ASPECTS OF
ELECTRIC RESTRUCTURING
SUPPLEMENTAL VOLUME II:
THE STATE SUMMARIES
2003 UPDATES**

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EXECUTIVE SUMMARY

This July 2003 report details the activities of each of the 50 states and the District of Columbia with regard to electric restructuring. The report is provided as an update to the state activities that were published in the Key Aspects of Electric Restructuring Supplemental Volume: The State Summaries, dated September 2000. This report was prepared by staff of the Florida Public Service Commission (FPSC). Because the electric industry changes almost daily, this report is a snap shot in time and future updates will be required to keep this information current.

The September 2000 supplement reported that 24 states had implemented restructuring to some degree¹. The District of Columbia had also implemented electric restructuring. As of July 2003, some of those original 24 states and the District of Columbia are still moving ahead with their restructuring efforts and some have delayed restructuring activity. Arkansas, California, Montana, Nevada, New Mexico, Oklahoma, and West Virginia have suspended, postponed or repealed restructuring efforts. Most of these states put their plans on hold after California experienced problems in connection with deregulation. The California Public Utilities Commission, in September 2001, issued a decision suspending the right of consumers to choose alternate electricity suppliers, citing extreme price volatility in the wholesale market. Legislation is currently being considered in California to repeal the original deregulation act and return California to regulation. The bill was passed by the Senate on June 5, 2003. It is currently under consideration by the House (as of June 30, 2003).

The Governor of Arkansas signed legislation in February 2003 that prevented the implementation of retail electric competition. The action came after the Arkansas Public Service Commission determined that Arkansas' electric ratepayers would be unlikely to benefit from, and could actually be harmed by, retail electric competition for the foreseeable future. Prior to this new legislation, retail electric competition was scheduled to start on October 1, 2003, at the earliest.

In May 2001, the Governor of Montana signed legislation to postpone full retail choice until July 2007. Previously, in October 2000, the Montana Public Service Commission had proposed extending the date for implementation of full customer choice from July 2002 to July 2004. As reasons for the delay, the PSC cited the lack of a competitive electricity supply market in the state and the need to ensure that a firm power supply exists for retail customers at a reasonable price. The PSC said it was unlikely that electricity supply markets would be workably competitive when the transition period ended. The PSC officially extended the transition period through a December 21, 2000 order, citing the fact that certain customers could be disadvantaged due to a lack of competitive electricity supply markets if the transition period was not extended.

The Legislature of Nevada passed legislation in April 2001 to completely stop plans to deregulate

¹The 24 states that had implemented restructuring as of September 2000 were Arizona, Arkansas, California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, and West Virginia.

the electric industry. The action was taken to avoid rate hikes and a situation similar to the one in California. Additional legislation was passed in July 2001 that permitted certain large customers to choose an alternative supplier starting in 2002, with the approval of the Nevada Public Utilities Commission.

Legislation was signed into law by the New Mexico Governor in April 2003 to repeal the 1999 state restructuring law. This came after action by the Legislature in 2001 to tentatively approve a measure that would delay restructuring for five years. Legislators were concerned about avoiding a situation similar to the one in California.

Oklahoma began to question its electric choice program after California's problems became public. In April 2001, the Legislature passed an emergency bill to delay restructuring until it could be studied further. The legislation established the Electric Restructuring Advisory Committee, which is still compiling its report of recommendation on retail choice.

West Virginia put its plans to restructure on hold indefinitely a few years ago, citing the low cost of electricity in the state, energy shortages in California, and a bad economy. The original start date of January 1, 2001, was put on hold. The Legislature did not take any action to implement deregulation during the 2001, 2002, or 2003 legislative sessions.

Seventeen of the original 24 states are still moving forward with deregulation. The results of their efforts are varied. States such as Maine, Massachusetts, Ohio, Pennsylvania, and Texas have reported at least moderate successes. Maine asserts that even though there has been virtually no retail competition in the small customer sector, these customers are already receiving the benefits of competition because suppliers compete to procure standard offer service in the state. Maine contends that their restructuring activities have been effected by events outside of their borders, but that these events and the lack of new suppliers for small customers are not an indication that their efforts have failed. Maine has also implemented several successful programs in connection with restructuring – including a statewide low-income assistance program.

Massachusetts has experienced relative success and stability in its restructuring efforts. Reasons for their success include allowing utilities to enter into long-term contracts for purchasing power on the wholesale market, incorporating regulatory flexibility in adapting to changing market conditions, savings from mandated rate reductions, and savings from aggregation.

While the number of alternative suppliers is decreasing, Ohio has experienced success through its aggregation programs. Aggregation accounts for 93 percent of residential switching. Other states have seen relative success through aggregation.

Pennsylvania has been able to keep prices down for customers with generation prices capped at January 1997 levels, distribution rates capped for four and a half years, and low coal fired and nuclear power costs.

Texas states it has achieved success in its restructuring efforts. Customers are saving money and there are multiple retail electric providers. The Texas PUC estimated that customers saved, at a

minimum, over \$1.5 billion in electricity costs during the first year of competition as compared to the regulated rates in effect during 2001. A study by the Center for the Advancement of Energy Markets rated Texas higher than any other state in the U.S. regarding electric deregulation. Possible reasons for Texas' success include excess generation capacity in the region and comfortable head room between the overall wholesale prices and the PUC enforced price-to-beat for affiliated retail electric providers. These two factors have combined to create the opportunity for profits which attract new entrants into the market.

Most states that are currently in a deregulated environment still have rate freezes and/or provide some form of standard offer service. While this keeps rates down for customers, it does not allow for the evaluation of how well retail competition is working. Several states have extended their transition periods and rate freezes beyond the original ending dates. Until there is full retail competition, it is not possible to tell how well the retail markets will work in each state and to see if customers will benefit from restructuring.

There are several states that have experienced similar problems during the restructuring process. Common problems include: a lack of retail switching, especially in the small customer market; a lack of competitive suppliers, especially for residential and small commercial and industrial customers; a lack of a workably competitive wholesale market; competitive suppliers leaving the retail market due to a lack of profits; and the exercise of market power in states with few utilities/generators. Due to the problems with the wholesale market, several states are concerned about the FERC and its ability to regulate. A lot of states have extended their standard offer service and/or rate freezes and are waiting to see how their markets and the markets of other states develop before implementing full retail choice. Several states, including some of those that have not restructured, want to watch what happens in other states before moving forward with full retail competition, or implementing some level of deregulation in the case of states that do not currently have restructuring plans. Some states have not seen any real savings for their customers after the implementation of restructuring.

One common theme for most states that are considering, or are already in the process of, restructuring is the need for caution. States want to move slowly to ensure that their restructuring plans are sound and that consumers benefit from, or at the least are not harmed by, restructuring.

STATES THAT HAVE
IMPLEMENTED
RESTRUCTURING

ARIZONA 2003 Restructuring Update

Restructuring Follow-up Activities and Reports Issued:

Since September 2000, several restructuring issues have been revised in Arizona. The Arizona Corporation Commission (ACC) issued a final order on September 10, 2002, regarding the transfer of assets and associated market power issues, Code of Conduct, Affiliated Interest Rules, and jurisdictional issues (termed Track A). The order modified previous restructuring decisions and resulted from proceedings opened by the ACC chair because of changes in the marketplace. In the September 2002 final order, the ACC stated that there was no active retail competition. The wholesale market was not workably competitive and therefore, relying upon that market without recognizing its current uncertainty and limitations would not result in just and reasonable rates for captive customers. According to the ACC, the FERC had not yet defined or implemented an effective regulatory and oversight approach for competitive energy markets, so it could not be relied upon to ensure that wholesale electricity prices were just and reasonable. The ACC found that, in order to protect the public interest, they must take further action to regulate the transition to competition. A final order was also issued on March 14, 2003, regarding competitive procurement issues (termed Track B).

The September 2002 decision required Arizona Public Service Company (APS) and Tucson Electric Power Company (TEP) to produce market power studies accompanied by market mitigation plans before allowing them to divest. Further, APS and TEP were ordered to seek a consensus approach to market power testing, monitoring and mitigation. TEP and APS were directed through the September 2002 order to cancel any plans to divest interests in any generating assets. The final order stated that APS and TEP had market power in certain load pockets and that full divestiture of their generating assets would limit the jurisdictional ability of the ACC to ensure that market power does not and will not exist in the future. If either TEP or APS wished to pursue divestiture, they were directed to file applications with the ACC. Under previous decisions, TEP and APS were required to divest interests in any generating assets by January 1, 2003. The previous requirement that 100 percent of power purchased for Standard Offer Service shall be acquired from the competitive market, with at least 50 percent through a competitive bid process, was stayed. The September 2002 order stated that upon the effective implementation of Track B, APS and TEP would be required to acquire, at a minimum, any required power that could not be produced from their existing assets, through the competitive procurement process as developed in the Track B proceeding.

The September 2002 order called for the formation of an Electric Competition Advisory Group (Group), to facilitate communication and information sharing among ACC staff, stakeholders, and market participants. ACC staff must prepare quarterly reports detailing the activities of the Group. As of May 2003, the quarterly reports detailed the formation of the Group, which will hold its first meeting at a later date.

The September 2002 decision ordered APS and TEP to work with ACC staff to develop a 2002 study process to resolve reliability must-run (RMR) generation concerns, and to include the study

plans in the 2004 Biennial Transmission Assessment. Until the 2004 Biennial Transmission Assessment is filed, APS and TEP must file annual RMR study reports with the ACC along with their January 31st annual ten year plans.

On March 14, 2003, the ACC issued its Track B decision regarding the solicitation process for bidders. Each bidder is required to allow ACC staff to inspect any generating facility the bidder owns or controls from which it proposes to provide capacity or energy to an Arizona utility pursuant to any contract awarded as a result of solicitation. Each bidder is also required to state in writing that it will not engage in unlawful market manipulation in either the solicitation process or the carrying out of its contract if it is the successful bidder. According to the order, APS and TEP have the right to reject all bids if they do not reasonably meet the needs of the utility and its customers, after sound economic and deliverability analysis of all bids received, including long and short term bids. The ACC will closely scrutinize the offered bids and the utilities' procurement decisions based on those bids. No exercise of affiliate preferences will be tolerated in the solicitation process. The order directed APS to adopt the practice of using "blind" procurement techniques, such as electronic auctions, for all of its short term, non-emergency purchases.

Sources of Information:

- 1) September 10, 2002, ACC Final Order (Track A),
<http://www.cc.state.az.us/utility/electric/Gen020051/020051fi.pdf>
- 2) March 14, 2003, ACC Final Order (Track B),
<http://www.cc.state.az.us/utility/electric/Track-B-03-19-03.pdf>
- 3) EIA Status of Arizona Electric Industry Restructuring Activity as of February 2003,
http://www.eia.doe.gov/cneaf/electricity/chg_str/arizona.html

ARKANSAS 2003 Restructuring Update

Current Restructuring Activities:

On February 21, 2003, the Arkansas General Assembly passed Act 204 of 2003, The Electric Utility Regulatory Reform Act of 2003: An Act to Repeal Chapter 19 of Title 23 and to Reform Electric Utility Regulation. The Governor passed the legislation, HB1114, shortly thereafter. Act 204 stated that the environment in the electric utility industry had changed, and it was in the public interest to continue regulating electric rates for the foreseeable future. The Act cited a determination by the Arkansas Public Service Commission (PSC) that Arkansas' electric ratepayers would be unlikely to benefit from, and could actually be harmed by, retail electric competition for the foreseeable future. The General Assembly passed Act 204 to prevent the implementation of retail electric competition. Act 204 of 2003 repealed Act 1556 of 1999 (which provided for the introduction of retail competition in the electric industry by January 1, 2002, but no later than June 30, 2003) and Act 324 of 2001 (which amended Act 1556 to change the earliest implementation date for retail electric competition from January 1, 2002, to October 1, 2003). Act 204 supercedes all previous PSC rules and regulations that were in favor of the implementation of retail electric choice.

Act 204 defined "transition costs" as those costs, investments, or unfunded mandates, either recurring or non-recurring, incurred by an electric utility after July 30, 1999, that are found to have been necessary to carry out the electric utility's responsibilities associated with efforts to implement retail open access, or were mandated by statute or regulation and are not otherwise recoverable. The Act provided that transition costs incurred no later than January 1, 2002, could be recovered by an electric utility through a customer transition charge during a period of time ending 36 months after the effective date of the law.

Act 204 directed the Arkansas PSC to conduct a collaborative meeting to study the feasibility of a large user access program for electric service choice, including a commitment to ensure there is no cost shifting to any other class of customers, and report to the General Assembly on or before September 30, 2004.

Restructuring Follow-up Activities and Reports Issued:

Prior to HB 1114 and Act 204 of 2003, the Arkansas PSC issued a report dated December 20, 2001, titled the Report To The General Assembly Pursuant To Act 324 On The Development Of A Competitive Electric Market And Possible Impact On Customers. In the report, the PSC recommended that the General Assembly consider either a complete suspension of the current statute for a considerable amount of time, perhaps until 2010 or 2012, or repeal the statute. The PSC recommendations were based on the lack of an operating regional transmission organization and the lack of evidence that all customers, especially residential and small commercial customers, would see a price benefit after restructuring. In fact, the cost for generation for all classes of customers in December 2001 was well below the regional and national average cost of electricity and it was likely that ratepayers would initially see a significant increase in prices in a competitive environment. PSC staff also stated that the transmission system needed to improve in order for competition to exist. The status of activities at the FERC was also cited as a reason that movement towards retail

competition in Arkansas was not in the public interest.

Sources of Information:

- 1) Act 204 of 2003, <http://www.arkleg.state.ar.us/ftproot/acts/2003/public/act204.pdf>
- 2) Report to the General Assembly Pursuant To Act 324 of 2001 on the Development of a Competitive Electric Market and Possible Impact on Consumers, December 20, 2001, http://170.94.29.3/pdfstorage/00-190-u_153_d_1313_20011220.PDF
- 3) Progress Report to The General Assembly on the Development of Competition in Electric Markets and the Impact on Retail Customers, November 28, 2000, http://www.accessarkansas.org/psc/psecs_electricderegreport_20001128.pdf
- 4) EIA Status of Arkansas Electric Industry Restructuring Activity as of February 2003, http://www.eia.doe.gov/cneaf/electricity/chg_str/arkansas.html

CALIFORNIA 2003 Restructuring Update

Current Restructuring Activities:

In September 2001, the California Public Utilities Commission (PUC) issued a decision suspending the right to enter into direct access contracts after September 20, 2001. This decision suspended the right of consumers to choose alternate electricity suppliers. Contracts already in effect before September 20, 2001, were allowed to continue until they expired. This decision came after several events that changed the electric markets in California, including extreme price volatility in the wholesale market.

Legislation which would enact the Repeal of the Electricity Deregulation Act of 2003 (SB 888) was passed by the California Senate on June 5, 2003. If the bill passes the other house of the Legislature, and is signed into law, it will ultimately do away with direct access and return California to regulation. By repealing the legislation that brought about restructuring (AB 1890), the bill would eliminate the provisions establishing the Power Exchange (PX) and the provisions relative to the ISO participation in FERC activities. The bill would provide that electrical and gas corporations have an obligation to serve retail customers with reliable service at just and reasonable rates. The bill would also provide that the obligation to serve includes the obligation to plan for and provide sufficient, affordable, reliable, cost-effective resources, including utility owned and procured generation resources, transmission resources, and distribution resources. The proposed legislation came after an investigation by the Senate Select Committee to Investigate Price Manipulation of the Wholesale Energy Market.

Assembly Bill 117 was approved by the Governor on September 24, 2002. The legislation authorizes local communities to aggregate their electrical loads and provide service directly to interested customers. AB 117 requires the PUC, no later than July 15, 2003, to establish policies and procedures by which any party, including, but not limited to, a local entity that establishes a community choice aggregation program, may apply to become administrators for cost-effective energy efficiency and conservation programs.

Restructuring Follow-up Activities and Reports Issued:

Since September 2000, the environment in California has undergone substantial changes as a result of restructuring. By requiring investor owned utilities (IOUs) to divest generating facilities, the power to set the prices of wholesale electricity was left to new suppliers. PX wholesale prices dramatically increased in 2000 and 2001. In a December 15, 2000, order, the FERC ended the mandatory PX buy/sell requirement. This allowed utilities to sell their own power directly to customers. Because retail rates were frozen and wholesale prices spiked, IOUs experienced increasing losses. Because of the wholesale price volatility, the PUC issued an interim order in January 2001, providing rate relief for Southern California Edison (SCE) and Pacific Gas and Electric (PG&E). San Diego Gas & Electric (SDG&E) had received approval from PUC to end its rate freeze early, on July 1, 1999. The order allowed the two IOUs to increase retail rates by one

cent per kWh for all rate classes, which translated into a 7 to 15 percent increase². The PUC approved a rate increase of 3 cents per kWh, effective May 2001, for PG&E and SCE again on March 27, 2001. Most of the increase was meant for reimbursement to the California Department of Water Resources (DWR).

In February 2001, the Governor signed ABX1 1 into law, allowing the DWR to purchase power under long-term contracts for utilities because the credit worthiness of IOUs had plummeted and some suppliers would not sell power directly to them. The legislation came shortly after the Governor proclaimed a state of emergency on January 17, 2001, and ordered DWR to immediately purchase and sell electric power, as necessary, to mitigate the effects of the emergency. The Governor signed AB 57 in September 2002, providing for utilities to start buying power no later than January 1, 2003. Under the bill, the PUC was charged with reviewing each utility's plan before it could resume buying power. According to a PUC news release, in December 2001, the PUC approved plans for PG&E, SCE, and SDG&E to resume buying power for their customers. The action allowed the utilities to procure power beginning on January 1, 2003, removing the responsibility from the DWR.

In the aftermath of the price spikes, the California Consumer Power and Conservation Financing Authority was created by SBX1 6 in May 2001. An August 24, 2001 news release stated that the Power Authority's purpose is ensuring reasonably priced, long-term availability of reliable supply of electricity and natural gas, promoting environmentally friendly supply and demand solutions, and achieving adequate capacity reserves by 2006.

The PUC's September 2002 Report on Wholesale Electric Generation Investigation suggested that the divestiture of generating plants by the utilities, which resulted in wholesale generators selling electricity in California at exorbitant market rates, was a serious blunder. The report stated that generators effectively manipulated the ISO's markets by not bidding large amounts of available generation into those markets, especially at times when the power was most needed. According to the report, the Governor signed into law legislation to reform generation problems. ABX1 5, signed into law on January 18, 2001, enacted key changes to the ISO's governance, assuring that none of the ISO's directors would be affiliated with any ISO power market participant. In April 2002, the Legislature adopted, and the Governor signed into law, SBX2 39, which will help alleviate future power shortages by allowing California to monitor the generators to detect unnecessary outages as they occur, regulate the generators' planned power plant shutdowns, review the legitimacy of the generators' unplanned shutdowns, and penalize generators and scheduling coordinators who violate operation, maintenance and outage regulations. The report stated that, to protect Californians from future power shortages, the Legislature could modify or repeal Public Utilities Code section 216(g), which provides that generators are not to be treated as public utilities under state law solely by virtue of their ownership or operation of wholesale electrical generation facilities.

The executive summary of the California Energy Commission's 2002-2012 Electricity Outlook

²EIA Status of California Electric Industry Restructuring Activity as of February 2003, http://www.eia.doe.gov/cneaf/electricity/chg_str/california.html

Report stated that modifications to retail pricing and to the wholesale market are necessary for a sustainable generation market. The summary warned that unless modifications are made, by 2005 California will be headed back into supply and demand conditions likely to produce tight supplies, price volatility, reliability concerns, and consumer dissatisfaction. According to the report, the current market structure must be changed because it cannot produce adequate generation in a timely and efficient manner. The summary also stated that reducing exposure to excessive market prices is likely to be more cost-effective over time than avoiding markets entirely by relying upon command and control decision making.

Sources of Information:

- 1) Senate Select Committee to Investigate Price manipulation of the Wholesale Energy Market's Report to the Full Senate of Contempt by Enron, <http://www.cbsnews.com/htdocs/pdf/enron.pdf>
- 2) 2003 Senate Bill 888, http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_888&sess=CUR&house=B&author=dunn
- 3) 2001-02 Assembly Bill 117, http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_0101-0150/ab_117_bill_20020924_chaptered.html
- 4) Report on Wholesale Electric Generation Investigation, <http://www.cpuc.ca.gov/static/industry/electric/wholesale+generator+report.pdf>
- 5) California Electricity Outlook Report, Executive Summary, http://www.energy.ca.gov/reports/2002-06-10_700-01-004F_exe.html
- 6) EIA Status of California Electric Industry Restructuring Activity as of February 2003, http://www.eia.doe.gov/cneaf/electricity/chg_str/california.html
- 7) September 20, 2001, PUC Decision, Interim Opinion Suspending Direct Access, http://www.cpuc.ca.gov/published/final_decision/9812.htm
- 8) December 19, 2002, PUC News Release, PUC Completes Steps Needed For Utilities to Resume Serving Their Customers, http://www.cpuc.ca.gov/PUBLISHED/NEWS_RELEASE/22130.htm
- 9) August 24, 2001, State of California Consumer Power and Conservation Financing Authority News Release, Debut of State Power Authority Begins New Energy Chapter For California, <http://www.documents.dgs.ca.gov/CPA/MediaRelease/Debut8-27-01.pdf>
- 10) May 15, 2001, CPUC News Release, CPUC Sets New Electric Rates For PG&E and Edison Customers, http://www.cpuc.ca.gov/PUBLISHED/NEWS_RELEASE/7171.htm

CONNECTICUT 2003 Restructuring Update

Current Restructuring Activities:

In May 2003, legislation titled An Act Concerning Revisions To The Electric Restructuring Legislation passed in the Senate and House of the Connecticut General Assembly and was signed by the Governor on June 26, 2003. With the new bill, several aspects of the 1998 restructuring legislation (Public Act 98-28) will change. The standard offer service (SOS) requirement will be extended for three years, from 2004 to 2007, and renamed transitional standard offer service. The legislation increases the maximum rate that utilities can charge customers for SOS. The bill establishes separate pricing rules for service provided to small and medium customers, and large customers. It will require utilities to procure power for standard service in a way that mitigates rapid changes in electricity prices. Under the legislation, utilities will be entitled to a fee for procuring power for transitional standard offer service. The bill will also require electric suppliers to obtain part of their power from renewable resources, modify the definition of renewable resources, require utilities to provide the Connecticut Department of Public Utility Control (DPUC) with information regarding the economic and environmental characteristics of their power, and require DPUC to restart its education program. The systems benefit charge on electric bills will be expanded to cover costs associated with utility workers at nuclear power plants who were dislocated due to restructuring, cover a broader range of educational costs, and reallocate the adder, which is defined as the difference between the utilities cost of standard offer service and its price.

Restructuring Follow-up Activities and Reports Issued:

The DPUC on February 15, 2002, issued the Joint Study By The Department of Public Utility Control And The Office Of Consumer Counsel Regarding Electric Deregulation And How Best To Provide Electric Default Service After January 1, 2004. The report came out of necessity because the original restructuring legislation provided for a standard offer period from January 1, 2000, through December 31, 2003. During that period, The United Illuminating Company (UI) and The Connecticut Light and Power Company (CL&P) were required to provide to customers all the services that were provided under a regulated environment. The February 15 report considers four alternatives for customers who still have not chosen alternate electricity providers as of December 31, 2003. The alternatives are (as specified in Act 98-28):

- 1) Competitive bid with department oversight. This would require distribution companies to procure default service generation through a competitive bid process supervised by the DPUC. The report stated that this option would likely produce the lowest cost for default service and does not appear to have any significant disadvantages.
- 2) Distribution company direct responsibility. Under this option, each distribution company would be required to procure and supply default service generation, with the cost of that service recovered through the systems benefit charge (SBC), which recovers non energy-related costs and currently comprises about 2 percent of a typical residential customer's bill. The report stated that shifting the cost of recovery from the generation service charges (GSC) to the SBC would likely confuse customers and create additional barriers to retail competition, and should be avoided.
- 3) Assessment of non-participating suppliers. The third option would require consideration of assessing competitive suppliers who choose not to carry default customers their proportionate share

of the cost of providing default service. The report states that this option has no discernable advantages.

4) State agency responsibility. Under this option, a state agency would be responsible for procuring default power. The report does not recommend this option, although it is relatively attractive, because it would require a high level of administrative oversight and there is a lack of experience among state agencies.

The report addressed the option of extending the standard offer beyond December 31, 2003. The DPUC and the Office of Consumer Counsel (OCC) concluded that small users are more obvious candidates for an extension of the standard offer than are large users. Also given consideration was the aggressive approach of requiring customers to choose a supplier and not provide the protection of default service. The report stated that this would be very risky and suggested a more tempered approach. Another option given was to adjust the GSC more frequently to make it more responsive to market conditions. The report stated that the consensus among the DPUC, the OCC, and the participants was that it would be appropriate to include in the GSC a retail adder - defined as an amount that is added to the wholesale cost of energy to produce the total retail price - with the wholesale price to reflect the costs that suppliers must incur to compete with default service. The DPUC and OCC supported a modest increase in the current retail adder.

In addition, the February 2002 report commented on other key aspects having to do with the state of the competitive electric market in Connecticut. With only about 0.2 percent of the eligible customers in Connecticut switching service providers as of October 2001, the majority of customers potentially will be effected when the current standard offer period expires³. The report stated that despite the lack of retail switching, Connecticut's electric industry has reached many milestones including the 10 percent rate reduction mandated by Public Act 98-28, the unbundling of rates, and the divestiture of generation assets. The report also stated that generation service charges resulted in extra revenues that were used to accelerate the amortization of stranded costs. Competition was impeded by the structure and administration of the GSC, the inability of suppliers to procure electricity, the cost to acquire customers, and a lack of understanding by customers regarding restructuring. The report stated that although outreach efforts raised customer awareness about restructuring in general, much remained to be done to educate customers about retail choice. The outreach effort needed to be renewed and must include a focus on overcoming the lack of understanding of the electric system and dispelling fears that customers have identified. Efforts must also include the promotion of awareness of and participation in energy efficiency programs. The report stated that the DPUC and OCC supported the following options to encourage retail competition: direct incentives, opt-out aggregation, wholesale power procurement, and reduction of customer acquisition and administrative costs.

³Joint Study by the Department of Public Utility Control and the Office of Consumer Counsel Regarding Electric Deregulation and How best to Provide Electric Default Service After January 1, 2004,
[http://www.dpuc.state.ct.us/FINALDEC.NSF/2b40c6ef76b67c438525644800692943/bfaaff120475df9c85256b6100705132/\\$FILE/011206-021502.doc](http://www.dpuc.state.ct.us/FINALDEC.NSF/2b40c6ef76b67c438525644800692943/bfaaff120475df9c85256b6100705132/$FILE/011206-021502.doc)

The report stated that the goals of Act 98-28 had been realized to some extent without retail competition. These goals included lower retail electric rates, effective competition in the restructured markets (i.e., for electric generation service) and the enhancement of Connecticut's environmental quality. The competitive wholesale market apparently provided these benefits instead of retail competition. The report suggested implementing any desired changes gradually and with fallback strategies to avoid the risk of "California-like" consequences. Several references to the California restructuring process were made in the report, usually in statements signaling the need for caution.

Sources of Information:

- 1) Joint Study by the Department of Public Utility Control and the Office of Consumer Counsel Regarding Electric Deregulation and How best to Provide Electric Default Service After January 1, 2004,
[http://www.dpuc.state.ct.us/FINALDEC.NSF/2b40c6ef76b67c438525644800692943/bfaaff120475df9c85256b6100705132/\\$FILE/011206-021502.doc](http://www.dpuc.state.ct.us/FINALDEC.NSF/2b40c6ef76b67c438525644800692943/bfaaff120475df9c85256b6100705132/$FILE/011206-021502.doc)
- 2) Senate Bill 733, An Act Concerning Revisions to the Electric Restructuring Legislation, Bill Analysis,
http://www.cga.state.ct.us/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB733&which_year=2003
- 3) EIA Connecticut Electric Industry Restructuring Activity as of February 2003,
http://www.eia.doe.gov/cneaf/electricity/chg_str/connecticut.html

DELAWARE 2003 Restructuring Update

Current Restructuring Activities:

Delaware has experienced a lack of new supplier activity since implementing their restructuring legislation in 1999. As of May 2003, there have been no new active suppliers serving residential customers since the 1999 restructuring implementation. A November 2001 status update by the Electric Choice Education Group (Group), which was established by the 1999 restructuring legislation, suggested that several factors may have contributed to the lack of supplier choice. Those factors included regional market prices, publicity surrounding the apparent failure of the California restructuring effort and economic issues. Due to a lack of participation in the market by suppliers, the Group put on hold a planned publicity and advertising campaign until new developments in the marketplace and/or revisions to the restructuring process occurred.

A January 7, 2003, Delaware Public Service Commission (PSC) order instructed the PSC staff to begin an examination of the Rules for Certification and Regulation of Electric Suppliers. The review was prompted by an application from an alternative supplier that convinced the PSC that the 1999 rules may need to be reexamined to review the need for, or improvements to, any particular rules as circumstances have changed since 1999. The order stated that certain regulations may need to be lifted, particularly if the present regulations impede the further expansion of competition. The order stated that none of the seventeen suppliers certified to provide electric supply in Delaware provided supply to residential customers as of January 7, 2003.

Restructuring Follow-up Activities and Reports Issued:

The original transition period for Delmarva Power & Light (DP&L) non-residential customers ended on September 30, 2002. The original transition period for residential customers will end on September 30, 2003. On April 16, 2002, a settlement agreement was approved by the PSC in conjunction with the proposed merger of DP&L and Potomac Electric Power Company. As part of the settlement, effective October 1, 2003, DP&L agreed to implement certain rate changes affecting both residential and non-residential customers. Under the agreement, DP&L would become the SOS supplier from May 1, 2003 through May 1, 2006. The settlement agreement answered rate questions regarding what would happen to DP&L customers after the transition period ended. Additionally, DP&L agreed to contribute \$200,000 to an organization for the promotion of renewable resources in the state, and adopt several proposed customer service practices, such as service level guarantees and "bill accuracy."

Under the original Delaware Electric Cooperative settlement, customers' rates are frozen during the transition period which ends on March 31, 2005.

The Electric Reliability White Paper, prepared by the staff of the Delaware PSC, dated March 20, 2001, stated, "as the phasing in of deregulation continues, it is apparent that structural impediments existing on the Peninsula (of Delaware) could have an increasingly adverse impact on the cost and reliability of electric supply to Delaware residents." The staff recommended several actions to improve the reliability and price of electric supply on the Peninsula of Delaware. Those actions

included adopting and implementing reliability standards, supporting performance based rate making for transmission enhancements, and working with other state agencies and other states to develop policies that would increase the price responsiveness of demand.

Sources of Information:

- 1) Delaware PSC Order Nos. 5941, 5999, 6038, and 6098, <http://www.state.de.us/delpsc/>
- 2) Electric Choice Education Group Status - November 2001, <http://www.state.de.us/electric/Del%20Choice%20Nov%202001%20final.htm>
- 3) September 2000 Comments on Lack of Residential Supplier Participation, <http://www.state.de.us/electric/oped-final.htm>
- 4) Delaware PSC Electric Supply Choice Web pages, <http://www.state.de.us/electric/index.html>
- 5) EIA Status of Delaware Electric Industry Restructuring Activity as of February 2003, http://www.eia.doe.gov/cneaf/electricity/chg_str/delaware.html
- 6) National Energy Affordability and Accessibility Project, Delaware Restructuring Web page, <http://neaap.ncat.org/restructuring/de-re.htm>
- 7) APPA Delaware Restructuring Web page, <http://www.appanet.org/legislativeregulatory/staterestructuring/rtwheel-del.cfm>

DISTRICT OF COLUMBIA 2003 Restructuring Update

Current Restructuring Activities:

All residential and commercial electricity customers have been able to choose an alternative electricity generation and transmission supplier since January 1, 2001. PEPCO continues to be the only distribution company and is therefore the sole deliverer of power to homes and businesses. As of April 2003, two alternative generation and transmission suppliers, PEPCO Energy Services (PES) and Washington Gas Energy Services (WGES), were serving the District. As of June 5, 2003, the District of Columbia Public Service Commission (PSC) had certified 12 alternative generation and transmission suppliers/aggregators. According to the PSC's Web site, of the 10 licensed suppliers that are not currently providing service, only two of them are approved to serve residential customers⁴. PES and WGES are approved to serve both residential and commercial customers. Service by PES and WGES accounted for 11.4 percent of residential customers and 16.5 percent of non-residential customers in April 2003. This represented 14.2 percent of residential MW demand and 48.7 percent of non-residential MW demand, and 13.7 percent of residential usage (MWH) and 48.5 percent of non-residential usage⁵.

A December 1999 PSC order capped rates for residential and commercial customers for four years (until February 7, 2005). Rates for low-income Residential Aid Discount (RAD) customers were also capped until February 7, 2007, under the 1999 order. A PSC order, F.C. No. 1002, in the May 2002 PEPCO/Connectiv Merger case, allowed for PEPCO's distribution rates to be capped at the February 7, 2005, levels for an additional 30 months, from February 8, 2005, through August 7, 2007, for non-RAD customers. Rates for RAD customers are capped through August 31, 2009.

The PSC is required to establish standard offer service (SOS) rules and regulations before January 2, 2004, and to select an SOS provider before July 2, 2004. On February 21, 2003, the PSC initiated a proceeding to establish a procedure for selecting a new SOS provider. On May 15, 2003, the PSC conducted a pre-hearing conference on the matter. PEPCO's obligation to serve as the District's SOS provider will expire by the end of 2004.

The 1999 restructuring act permitted the Mayor of the District of Columbia to develop and administer a Municipal Aggregation Program (MAP). In February 2001, the District of Columbia Energy Office (DECO), on behalf of the Mayor, established the District of Columbia Municipal Aggregation Task Force to explore the creation of a municipal aggregation program. On May 6, 2002, the PSC issued an order and report regarding MAP and recommended that any MAP should be implemented on an opt-in basis. The PSC also recommended proceeding deliberately to get to market with an RFP to locate an aggregate supplier. During an October 4, 2002 press conference,

⁴District of Columbia PSC Web site, Alternative Electric Suppliers and Brokers page, <http://www.dcpsc.org/ci/cch/elec/aesp.pdf>

⁵District of Columbia PSC Web site, Retail Electric Restructuring pages, <http://www.dcpsc.org/ci/cch/elec/elec2.html>

the Mayor announced the issuance of an RFP for the MAP suppliers on an opt-in basis. Then a Request for Technical Proposals (RTP) was issued and on May 6, 2003, a pre-proposal conference was convened. The due date for the RTP was May 23, 2003. The Municipal Aggregation Working Group is currently reviewing the proposals and qualified bidders will be selected upon completion of the evaluation process.

Restructuring Follow-up Activities and Reports Issued:

As of January 8, 2001, PEPCO had completed the sale of its generation plants. According to the PSC, the divestiture of PEPCO's generation plants enabled PEPCO's customers to avoid having to pay any stranded costs, which reduced customers' rate burdens. Through September 2001 and October 2001 orders, PEPCO was ordered by the PSC to distribute divestiture sharing credits to customers for annual usage ending March 31, 2001. The total credits distributed to customers amounted to \$51.85 million. The PSC approved another distribution on November 7, 2002. An additional \$24 million in divestiture sharing credits to residential and business ratepayers was approved.

The PSC on September 19, 2001, issued Order No. 12186, which identified price-to-compare information to be posted on the PSC's Web site. In the order, the PSC adopted tables that calculate the impact of switching to alternative generation and transmission suppliers. Under the order, rates and other information provided by suppliers for inclusion on the Web site are to be forwarded to the PSC within three days of the stated posting date to ensure the accuracy of the posted information.

Sources of Information:

- 1) District of Columbia PSC Web site, Retail Electric Restructuring pages, <http://www.dcpsc.org/ci/cch/elec/elec2.html>
- 2) District of Columbia PSC Web site, Alternative Electric Suppliers and Brokers page, <http://www.dcpsc.org/ci/cch/elec/aesp.pdf>

ILLINOIS 2003 Restructuring Update

Current Restructuring Activities:

As of September 2002, only about 6.5 percent of all non-residential customers had switched to alternative services or signed a discounted rate power and energy contract with the incumbent electric utility⁶. In the service areas of Illinois' six smallest electric utilities, customers and suppliers had exhibited little to no interest in alternative services. There had been no residential customer switching.

The Illinois Commerce Commission's (ICC) Assessment of Competition In the Illinois Electric Industry in 2002, issued in April 2003, stated that twelve retail electric suppliers (RESs) sold power to non-residential retail customers in 2002⁷. The power sold by RESs represented about 12.5 percent of sales to all retail customers. As of 2002, the ICC had not received any applications for certification to serve the approximately 4.4 million eligible residential customers.

Restructuring Follow-up Activities and Reports Issued:

The ICC in January 2003 issued its Assessment of Competition in the Illinois Electric Industry: Findings and Recommendations. As required by law, the report was one of several that have been issued by the ICC to the General Assembly since the 2000 restructuring summary was written. The January 2003 assessment concluded that competition had not fully developed in either the wholesale or the retail markets and that there was a question as to whether the markets will be competitive by the end of the transition period, when the current rate freeze is due to expire. [The Illinois General Assembly passed SB2081 in 2002, which extended the mandatory transition period from January 1, 2005 to January 1, 2007.] The January 2003 assessment stated that retail market competition will not evolve until suppliers can rely on a competitive wholesale market, which is limited by the structure of the Illinois electric industry - in which holding companies own or control most of the generating capacity in each service territory, in addition to transmission and distribution facilities. The ICC stated that aggressive price competition is unlikely to occur while only one or two entities own the majority of generating capacity in each service area. Other possible reasons for a lack of competition given in the assessment included 1) limitations in the electric links between geographic areas; 2) the absence of a dependable and transparent regional wholesale power market; 3) the existence and volatility of transition charges - which have made customers hesitant to sign long-term contracts; 4) the unbundled, market-based generation Purchase Power Option (PPO) - which while providing benefits to customers, presents problems for suppliers because customers can expect to obtain the same costs by switching to the PPO as by purchasing power from RESs; 5) the close corporate relationship between electric utilities and their generating affiliates; and 6) rates in many parts of the state that are already low by current market standards. The report stated that unless

⁶ICC Assessment of Competition in the Illinois Electric Industry: Findings and Recommendations, January 2003, <http://www.icc.state.il.us/ec/docs/030122comprpt.pdf>

⁷ICC Assessment of Competition in the Illinois Industry in 2002, April 2003, <http://www.icc.state.il.us/ec/docs/030513garpt16120.pdf>

generation ownership concentration is diluted and/or transmission is developed to permit greater movement of competing power supplies into utility service territories, Illinois can expect future inefficient power supply pricing and higher prices for consumers than a competitive market would deliver.

The ICC stated it was concerned that the alternative suppliers operating in the market would eventually lose interest in providing service in Illinois and might not exist when the transition period ends. They recommended the following policies to encourage customer and supplier interest in retail competition and enhance the possibility that the wholesale market could become competitive:

- 1) Require Illinois utility membership in properly designed and configured RTOs. The report stated that this would mitigate the negative effects of conflicts of interest between utility transmission operation and utility-affiliated market interests.
- 2) Readdress functional separation issues. The report stated that there is a great need to readdress the issue of functional separation between regulated utilities and their unregulated affiliates.
- 3) Allow new transmission investments on the basis of the promotion of competition. The report stated that the facility certification provisions of the current law should be revised to reflect promotion of competitive electric markets.
- 4) Greater oversight of utility asset transfers. The report stated that under the current statute, generation ownership concentration levels could increase during a time when competitive market development depends upon concentration decreasing.
- 5) Require competitive bidding for bundled supply. The report stated that open bid supply auctions would facilitate the development of wholesale competition to serve bundled load and provide a more transparent marketplace.
- 6) Modify Sec. 16-111 to permit the Commission to set non-discriminatory stand-by rates.
- 7) Do not permit electric utilities to reject Commission market value decisions.
- 8) Modify the Public Utilities Act to permit electric suppliers to use telemarketing-based customer enrollment methods.
- 9) Eliminate the 24-month minimum enrollment requirement.
- 10) Consider Implementation of Municipal Aggregation.

The January 2003 assessment concluded that Illinois should do all within its authority to remove competitive market barriers and should continue to encourage federal officials to carefully monitor developments in wholesale markets and move quickly to improve competitive market structures. The Commission stated it was not optimistic that the wholesale market will become reasonably competitive by the end of the rate freeze in 2006. The ICC recommended that the General Assembly consider policies to increase the number of independent entities, including customers, that own generation in a service area and also act to eliminate disincentives for needed expansion of the transmission grid.

Sources of Information:

- 1) Assessment Of Competition In The Illinois Electric Industry: Findings And Recommendations, <http://www.icc.state.il.us/ec/docs/030122comprpt.pdf>
- 2) Assessment Of Competition In The Illinois Electric Market Industry In 2002, <http://www.icc.state.il.us/ec/docs/030513garpt16120.pdf>

- 3) EIA Status of Illinois Electric Industry Restructuring Activity as of February 2003,
http://www.eia.doe.gov/cneaf/electricity/chg_str/illinois.html
- 4) 2002 Senate Bill 2081,
<http://www.legis.state.il.us/legislation/legisnet92/summary/920sb2081.html>

MAINE 2003 Restructuring Update

Current Restructuring Activities:

The Maine Public Utilities Commission (PUC) issued its Standard Offer Study and Recommendations Regarding Service after March 1, 2005 on December 1, 2002. This study was originally to be conducted by the PUC during the first six months of 2004, but the Legislature amended the law to require that the investigation occur in 2002. This would allow sufficient time for the Legislature to fully consider the issues and allow any changes to be implemented before the standard offer service requirement ends on March 1, 2005. At the time the study was issued, the PUC was engaged in its fourth set of standard offer bid processes. During the first two attempts, suppliers were either reluctant to bid or their bids reflected significant risk premiums because of uncertainty in the developing regional wholesale markets. Participation increased in the third year, after the wholesale markets had become more stable and many supplier concerns about Maine's retail model had been resolved. The study stated that there appeared to be a functioning competitive market for standard offer service in Maine, but that sustaining this market depended to a large degree on the state of the wholesale markets. The PUC stated that these markets can be volatile and are still developing, due in some part to FERC initiatives. According to the study, as of August 2002, 60 percent of the load in the medium/large customer sector was being served by retail suppliers, leaving only 40 percent on standard offer service⁸. On the other hand, retail competition in the residential and small commercial sectors had not emerged to any real degree (except in northern Maine as discussed below). The assessment suggested that suppliers remained focused on large customers where profit margins are higher and administration is less complex and less costly.

The PUC recommended that standard offer service be extended after March 1, 2005, stressing that its purpose and design should be reflective of the nature of competition in each customer sector. The study stated that in the large, well-developed market sector, standard offer service should be a last resort or contingency service and should encourage and sustain customer out-migration to the market. In the small commercial and residential markets, where there is virtually no retail competition, standard offer service should be acknowledged as the supply source for most or all customers. The PUC recommended that Maine continue with the basic model of standard offer service currently in use because they concluded that retail competition is unlikely to develop for small customers by March 1, 2005. The PUC stated that small customers are already receiving the benefits of competition because suppliers compete to procure standard offer service in Maine. The PUC stated that the present lack of a small customer market in Maine is not an indication that their restructuring efforts have failed. The study stated that the Legislature should proceed cautiously when considering what to do with standard offer service.

Through the December 1, 2002, study, the PUC made several recommendations about measures to create new opportunities for all retail suppliers, including aggregators. The PUC favored providing customer lists and customer data to suppliers, allowing supplier access to customers via their

⁸Standard Offer Study and Recommendations Regarding Service After March 1, 2005, <http://www.state.me.us/mpuc/new%20standard%20offer/sostudy-final.pdf>

transmission and distribution utility bills, and requiring transmission and distribution utilities to produce and mail disclosure labels for all suppliers. The PUC stated it was opposed to adders, direct assignment, and municipal aggregation. The study recommended provisions if the Legislature decided to enact legislation authorizing negative option municipal aggregation. The recommendations included requiring a vote as part of a town meeting process or a ballot initiative, requiring aggregating entities to hold hearings on their plans, and requiring adequate notice of rates and terms of service prior to implementation.

In the report, the PUC also recommended the introduction of “green offer” service beginning March 1, 2005. The green offer supply would comprise only renewable resources and be available as an affirmative choice option to residential and small commercial customers. The PUC recommended green offer because there is currently no active retail market and they did not expect one to develop in the short term.

Restructuring Follow-up Activities and Reports Issued:

The PUC is required by law to submit a report regarding restructuring to the Legislature each December. The Annual Report on Electric Restructuring was presented to the Utilities and Energy Committee on December 31, 2002. The report listed several accomplishments and results of the restructuring efforts over the past two years. The report stated that during 2001, the wholesale market exhibited volatile and sometimes high generation prices which resulted in higher retail prices for consumers and difficulties in procuring and administering standard offer service. The wholesale market was less volatile in 2002. The report stated that during 2002, electric prices for most customers were generally lower than or comparable to prices before restructuring and that the regional wholesale market rules appeared to be progressing towards a sustainable, competitive, efficient market.

The December 31, 2002, annual report stated that because standard offer rates dropped substantially in March 2002, approximately 30 percent of the load for medium and large customers that had been in the market returned to standard offer after March 2002⁹. Also reported was the fact that the financial collapse of Enron and its sudden exit from Maine’s market may have contributed to the movement of customers back to the standard offer. The report stated that, as a result of the Enron scandal and the findings that many other major energy companies were engaging in fraudulent or misleading accounting practices, many providers scaled down their electricity trading practices or became distracted by financial problems. This market climate apparently resulted in the problem of somewhat fewer suppliers offering service in Maine.

While most of Maine’s small customer sector saw little to no retail competition, northern Maine’s residential and small commercial customers continued to migrate to the open market during the year,

⁹2002 Annual Report on Electric Restructuring,
<http://www.state.me.us/mpuc/2002legislation/ERR-RPT.pdf>

reaching a 33 percent migration rate by the end of 2002¹⁰. The report stated that the reason for this variation between northern Maine and the rest of the state was because the north is not physically connected to New England's transmission grid. While northern Maine saw relatively higher rates of competition in the small customer sector, the market had only two competitive suppliers as of December 2002. The report stated that most regional suppliers view the market in northern Maine as too small to warrant entry. The report suggested that measures to make the area of northern Maine part of a larger market would be necessary to increase the number of suppliers.

Since 2000, the PUC has implemented several successful programs in connection with restructuring. In 2002, the PUC worked with suppliers and utilities to draft a disclosure label that was easier for customers to understand. In April 2002, the Legislature amended the Restructuring Act to make the PUC responsible for developing and administering a statewide conservation plan. During 2002, the PUC approved twelve "interim programs" including the Maine energy curriculum investigation and the residential energy efficient lighting initiative. On July 31, 2001, the Commission adopted the Statewide Low-Income Assistance Plan to make electric bills more affordable for qualified low-income customers. The report stated that for the first time in Maine, every eligible person, regardless of the utility service territory in which he or she lived, had access to an assistance program created to make electric bills more affordable.

The 2002 annual report concluded that events beyond Maine's borders had a significant effect on the state's restructuring efforts and that participation in regional activities and monitoring the local market remained critically important tasks for the Commission in 2003. The financial and legal problems of energy suppliers and the unsettled regional and national market rules continued to effect the development of Maine's retail market.

Sources of Information:

- 1) Standard Offer Study and Recommendations Regarding Service After March 1, 2005, <http://www.state.me.us/mpuc/new%20standard%20offer/sostudy-final.pdf>
- 2) 2002 Annual Report on Electric Restructuring, <http://www.state.me.us/mpuc/2002legislation/ERR-RPT.pdf>
- 3) EIA Status of Maine Electric Industry Restructuring Activity as of February 2003, http://www.eia.doe.gov/cneaf/electricity/chg_str/maine.html
- 4) Maine PUC December 4, 2002, News Release, <http://www.state.me.us/mpuc/News%20Releases/prstdofferstudy.htm>

¹⁰2002 Annual Report on Electric Restructuring, <http://www.state.me.us/mpuc/2002legislation/ERR-RPT.pdf>

MARYLAND 2003 Restructuring Update

Current Restructuring Activities:

The Public Service Commission of Maryland (PSC) issued an order on April 29, 2003, which approved a settlement agreement to extend standard offer service (SOS). Under the original restructuring settlements, price protections for most customers expire in 2004. The PSC found that the retail electricity supply market was not competitive and therefore, extending the utilities' obligations to provide SOS was required by law. The PSC stated, as proof that the requirement for competition was not being met, that as of October 2002, only 3.4 percent of electric distribution customers in Maryland took service from a supplier, and only 3 percent of residential customers statewide took service from a supplier¹¹. Also of concern was the fact that only two suppliers were marketing to residential customers at the time of the order. The order provided that electric generation supply for SOS will be obtained pursuant to a competitive wholesale procurement process which will result in a wholesale market price for SOS supply. The approved settlement agreement extends residential SOS from January 1, 2009, to December 31, 2012, for customers of Allegheny Power; from July 1, 2006, to May 31, 2010, for Baltimore Gas and Electric customers; and from July 1, 2004, to May 31, 2008, for customers of Delmarva and Pepco.

Senate Bill 285 was signed by the Governor of Maryland on April 25, 2002. The bill requires electric companies in Maryland to update specified generation and emissions studies relating to electric restructuring; and requires the studies to be submitted to the PSC and the Department of the Environment on or before December 31, 2003, and December 31, 2005. If it is determined that restructuring has a negative impact on Maryland's environment, then the PSC will consider establishing an air quality surcharge or other mechanism to protect Maryland's environment in connection with the implementation of customer choice of electricity suppliers.

Senate Bill 504 was signed by the Governor on April 22, 2003. The bill continues the electric universal service charge at a specified level for specified purposes; providing assistance for the retirement of arrearages for electric customers who have not previously received assistance in retiring arrearages under the universal service program and whose annual income is at or below 150 percent of the federal poverty level. It authorizes the waiver of a specified income eligibility limitation for certain electric customers who would qualify for a similar waiver under the Maryland Energy Assistance Program.

According to the Electric Choice Enrollment Monthly Report for the month ending April 25, 2003, the percentage of residential customers enrolled with an electric supplier was 3.8 percent and the percentage for non-residential customers was 5.1 percent. The report also revealed that the number of electric suppliers serving residential customers only was zero, serving non-residential customers

¹¹PSC Order No. 78400, dated April 29, 2003,
http://webapp.psc.state.md.us/Intranet/CaseNum/NewIndex3_VOpenFile.cfm?ServerFilePath=D%3A%5CCasenum%5C8900%2D8999%5C8908%5C184%2Edoc

only was 10, and serving both classes of customers was 3¹².

Restructuring Follow-up Activities and Reports Issued:

The Maryland Office of People's Choice (OPC) in January 2002, issued its Report on Electric Choice. The report stated that while Maryland implemented a residential electric choice program with significant consumer benefits (i.e., price freezes, rate caps, low-income assistance, and consumer education programs), residential customers had seen virtually no savings from competitive retail electric markets. The report stated that Maryland's electric deregulation experience had not produced the expected results and that the wholesale electricity markets were not yet functioning efficiently, which could effect electricity prices. The OPC recommended that Maryland legislators, before some price caps expire in June 2004, consider actions that would revise the Electric Choice program to require electric utilities to remain retail suppliers for all residential customers on their systems. The report stated that delaying the Electric Choice program for residential customers would provide time for the wholesale market to mature and allow regulators to put into place meaningful rules to prevent or mitigate the exercise of market power. The January 2002 report stated that after 18 months of Electric Choice, 2.6 percent of residential customers of utilities with Electric Choice programs switched from their utility to another supplier, accounting for 3.5 percent of load. In commercial and industrial markets, 4.1 percent of customers had switched suppliers, accounting for 10.7 percent of load¹³.

The January 2002 OPC report stated that one unexpected outcome of restructuring was that Maryland residents may have less access to their utility and fewer options for utility assistance with billing and service problems. Utility companies responded to restructuring by reducing costs, consolidating operations, and often reducing their workforce. The report also concluded that owners of electric generation have exercised market power in wholesale electricity power pools - which is an indication that the wholesale electricity market is not yet working efficiently.

The OPC report recommended actions that legislators and regulators could take to improve the current situation for residential electricity customers in Maryland. One action recommended was to allow municipal aggregation. According to the report, in other states, buying power through municipal aggregation has resulted in competitive, fixed electricity prices for residential consumers over a period of two years or more. The process shields consumers from the often extreme price volatility of the wholesale electricity market. Another recommended action was to ensure that wholesale electricity markets are workably competitive. The report stated that residential and small business customers are unlikely to benefit under electric deregulation unless wholesale markets can be made to function efficiently. The report recommended that FERC continue to exercise its authority to ensure that markets work efficiently and consumers are protected. The OPC also identified a number of state regulations that need revision. The report stated that those regulations

¹²Electric Choice Enrollment Monthly Report, All Utilities Where Choice is Available in Maryland, Month Ending April 25, 2003, <http://www.psc.state.md.us/psc/>

¹³Maryland Office of People's Counsel Report on Electric Choice, <http://www.opc.state.md.us/consumer/pdf/EIChoiceReport.pdf>

cover credit and collection practices, late payment fees, security deposits, criteria for approving and terminating service, restrictions on service terminations, provisions of alternate payment plans, notice requirements, and dispute procedures.

In response to the OPC report, the PSC issued a news release on January 24, 2002, stating that electric customer choice deserves a chance. According to the news release, the PSC disagreed with the view expressed by the OPC that residential customer choice should be suspended. Commission Chairman Catherine I. Riley said, "It is too soon to conclude anything about electric choice except that it has been slow to develop in much of Maryland."¹⁴ The release stated that a proposal by the FERC to merge the PJM Interconnection Grid with that of New York and New England, along with immediate rate reductions for all residential customers, caused some marketers not to enter the Maryland and PJM markets.

The PSC, in January 2003, issued its Electric Supply Adequacy Report of 2003. In the section regarding movement to retail choice, the report stated that the introduction of competition into the electric industry maintains the potential for significant benefits to electricity customers.

The PSC's report, Consumer Education Plan: Year III, highlighted recommendations for the third year of the Consumer Education Plan (CEP) and listed the results of the first two years of the campaign. The achievements of the campaign during its first two years included public relations and media relations activities, paid advertising, educational materials, community based outreach meetings with more than 165 community groups and organizations, two quantitative research studies which measured consumer knowledge, a toll-free Answer Center, and a campaign Web site. The report stated that despite the lack of a competitive market offering consumers real options, the strategies and tactics used as part of the CEP had engaged and educated Maryland customers. The report stated that the challenge in year three of the campaign was how best to sustain the gains of the CEP and manage customer concerns as the national energy debate remains at the forefront. The report listed recommended revised objectives for year three that entail expanding the PSC's public education efforts beyond preparing customers for competition, to providing them with an ongoing understanding of what electric restructuring really is, how it works, where it is today, and what this means to them.

Sources of Information:

- 1) Electric Choice Enrollment Monthly Report, All Utilities Where Choice is Available in Maryland, Month Ending April 25, 2003, <http://www.psc.state.md.us/psc/>
- 2) Public Service Commission of Maryland Electric Supply Adequacy Report of 2003, <http://www.psc.state.md.us/psc/Reports/2003SupplyAdequacyDraft.pdf>
- 3) Customer Choice Deserves a Chance, a January 24, 2002 PSC News Release,

¹⁴Customer Choice Deserves a Chance, a January 24, 2002 PSC News Release, <http://www.psc.state.md.us/psc/AboutUs/Press/choice.htm>

<http://www.psc.state.md.us/psc/AboutUs/Press/choice.htm>

- 4) PSC Order No. 78400, April 29, 2003,
http://webapp.psc.state.md.us/Intranet/CaseNum/NewIndex3_VOpenFile.cfm?ServerFilePath=D%3A%5CCasenum%5C8900%2D8999%5C8908%5C184%2Edoc
- 5) Maryland Office of People's Counsel Report on Electric Choice,
<http://www.opc.state.md.us/consumer/pdf/ElChoiceReport.pdf>
- 6) Maryland Public Service Commission Consumer Education Plan: Year Three Recommendations, <http://www.psc.state.md.us/psc/electric/ConsumerEdPlanYr3.pdf>
- 7) 2002 Senate Bill 285, <http://mlis.state.md.us/2002rs/bills/sb/sb0285.rtf>
- 8) 2003 Senate Bill 504, <http://mlis.state.md.us/2003rs/bills/sb/sb0504e.rtf>

MASSACHUSETTS 2003 Restructuring Update

Current Restructuring Activities:

In November 1997, the Legislature passed House Bill 5117 which mandated the restructuring of the electric utility industry in Massachusetts. Another bill that was enacted regarding deregulation was House Bill 4006, which authorized a 2.5 mills/kWh systems benefit charge until 2007. It was signed by the Governor February 28, 2002. The Massachusetts Department of Telecommunications and Energy Electric Power Division's mission has evolved with the restructuring of the electric industry in Massachusetts. The division's mission as of November 1997 is to ensure that (1) the retail competitive market is implemented in a fair and efficient manner that brings benefit to consumers of electricity, and (2) electric service is provided to consumers in a safe and reliable manner.

From January 2001 to December 2002, the total percentage of customers that switched from Incumbent Generation Customers to Competitive Generation Customers increased from .23 percent to 2.7 percent. From January 2003 to May 2003, that number increased to 3.5 percent¹⁵.

Restructuring Follow-up Activities and Reports Issued:

A 2003 report by the AIM Foundation (Associated Industries of Massachusetts Inc.) stated that through conservative and practical decision making, Massachusetts has experienced considerable stability and success in its restructuring efforts in comparison to other states. The report cites following decisions made by the Legislature:

- 1) **Streamline Power Plant Permitting Process** that allowed market forces, instead of the government, to determine the need for new plants while maintaining a rigorous yet streamlined environmental permitting process for siting new plants.
- 2) **Allowing Utilities to Enter into Long-Term Contracts** for purchasing power on the wholesale market. Massachusetts allowed utilities to determine how to buy power for their consumers through a combination of fixed-priced, long term contracts, as well as potentially more volatile "spot market" purchases.
- 3) **Incorporating Regulatory Flexibility** in adapting to changing market conditions. Massachusetts regulators pragmatically allowed transitional supply service prices to change to reflect changing market conditions.
- 4) **Savings from Mandated Rate Reductions.** According to the Massachusetts Division of Energy Resources, all IOUs have gained \$1.7 million in cumulative savings through December 2000 (latest data available) from a combination of mandated rate reductions and net revenues from the sale of generation facilities even accounting for fuel adjustment.
- 5) **Savings From Aggregation.** Municipal governments and nonprofit organizations are allowed to aggregate purchases in order to obtain volume discounts from power suppliers.
- 6) **Enhanced Electricity Supply and Infrastructure.** Twenty-two new generating plants are operational or under construction in New England since the restructuring act was signed into law, representing an increase of approximately 40 percent in the regions electricity.

¹⁵Electric Power Custom Migration Data
http://www.state.ma.us/doer/pub_info/migrate.htm

- 7) **Cleaner Air.** All new power plants that have been built or are under development are natural gas-fueled. Through a combination of advanced technology and the basic properties of natural gas, these plants are twice as efficient and up to 10 times cleaner than other fossil-fueled plants.
- 8) **Continued Energy Efficiency.** From 1997 to 2001, about \$500 million was collected from ratepayers for energy efficiency programs and an estimated \$110 million is expected to be collected annually between 2002 and 2007. Overall energy efficiency programs can positively affect the cost of electricity for households, the wholesale prices of electricity and reduce air pollution.
- 9) **Improved Service Reliability.** The Department of Telecommunications and Energy established service quality standards to measure the performance of the still regulated distribution portion of the electricity business. Service quality standards have worked to penalize substandard service and have resulted in over \$100 million in investments that were made by local distribution companies to improve service reliability.
- 10) **Emerging Competitive Retail Markets.** Over the past year, a competitive retail market has emerged serving both large and medium-sized commercial and industrial (C&I) customers. As of June 2002, 44 percent of the state's large C&I customer load and 18 percent of the state's medium C&I load was supplied by competitive suppliers, providing savings to over 7,300 customers in those sectors. Conversely, there are few competitive options for residential and small C&I customers as evidenced by the fact that almost all residential and small C&I customers receive standard offer service or default service.

Despite these significant accomplishments, regulators and/or the Legislature may have to consider evolutionary changes to fully obtain restructuring goals. The 2003 report from the AIM Foundation listed the following changes and identified the need for possible action.

- 1) **Transition Period Expiration without a Robust Retail Market for Smaller Customers:** As of June 2002, competitive suppliers supplied only 2 percent of the states residential load and 11 percent of small C&I load. This is because transitional retail rates under the Restructuring Act have been, for the most part, at or below market-priced wholesale generation cost.
- 2) **Improvements to Reduce Transmission Constraints:** New England's electric transmission system has constraints, wherein electricity cannot be economically delivered to some areas during peak demand periods. According to ISO New England, transmission "congestion" between 2002 and 2007 could cost Massachusetts' consumers millions of dollars each year.
- 3) **Declining Fuel Diversity:** Fuel diversity for generation electricity helps ensure stable and reliable electricity markets. Roughly 50 percent of the region's electricity will soon be generated by natural gas.

There are no identified current major problems due to restructuring in Massachusetts. The plans initiated so far have been working appropriately.

Sources of Information:

- 1) APPA Massachusetts Restructuring Update, www.appanet.org/legislativeregulatory/staterestructuring/restruct2.cfm
- 2) Investigation by the Dept. of Telecommunications and Energy on its own Motion into the Provision of Default Service, <http://www.state.ma.us/dpu/electric/02-40/424order.pdf>

- 3) AIM Foundation Report, Electric Industry Restructuring in Massachusetts,
http://www.aimnet.org/image/Files/white_paper_final.pdf
- 4) Massachusetts Division of Energy Resources Electric Power Migration Data,
http://www.state.ma.us/doer/pub_info/migrate.htm

MICHIGAN 2003 Restructuring Update

Current Restructuring Activities:

In June 2000, the Michigan Public Service Commission (MPSC) ordered Detroit Edison and Consumer Energy to immediately reduce residential rates by 5 percent. In November 2000, the PSC issued two orders approving Detroit Edison's and Consumer Energy's financing order applications that would allow them to issue securitization bonds. The refinancing will allow both companies to cover the cost of implementing the 5 percent reduction in rates. The PSC issued an order October 11, 2001, adopting the settlement agreement and authorizing Wisconsin Electric Power Co., Edison Sault Electric Co., Wisconsin Public Service Corp., Upper Peninsula Power Co., Northwestern States Power Co. - Wisconsin, Indiana Michigan Power Co., and Alpena Power Co., to implement Customer Choice and Electricity Reliability Act implementation plans. In December 2001, the PSC issued new orders, effective on January 1, 2002, to advance Michigan's competitive electric environment.

There were originally two active programs in Michigan which permitted electric customers to select competitive suppliers of generation services. The programs were offered in the service territories of Detroit Edison Company and Consumer Energy Company. These programs were commissioned as trials or transitions to full open access to electric generation sources which commenced on January 1, 2002. The Direct Access Program was the first in Michigan, and also one of the very first in the U.S., to offer retail customer choice in electric generator supply. This program was limited to about 135 megawatts (MW) of load. The program was scheduled to expire on December 31, 2000, however, the Commission extended the program ending date to coincide with the approval of the revised Electric Choice Program and Electric Customer Choice Program tariffs for Detroit Edison and Consumer Energy, respectively. The second program was the Experimental Retail Access Program. When the Electric Choice Program and The Electric Customer Choice Program were enacted the Direct Access Program was discontinued.

There are currently three open access programs in Michigan. Consumer Energy has one program in its service territory and Detroit Edison has two. Detroit Edison is currently generating and transmitting electricity to approximately 2.1 million customers in Southeastern Michigan. Consumer Energy is currently generating electricity to 1.2 million electric customers in Michigan.

In Consumer Energy's Electric Customer Choice program, during the first quarter of 2003, about 50 MW of load was added to the program, and 40 more customers were served. At the end of the first quarter, Consumer reported 516 MW and 603 customers in service. That represented about 6 percent of Consumer's peak load and 5.6 percent of kWh sales over the previous 12 months. There are no residential customers being served by alternative electric suppliers (AESs) in Consumer's territory at this time. Consumer reports about 0.25 percent of commercial and 1.4 percent of industrial customers are currently participating in electric choice. Kilowatt-hour sales in the Consumer Energy customer choice program are almost exactly 30 percent commercial and 70 percent industrial. Over the past twelve months, commercial retail open access sales represented about 5.4 percent and industrial retail open access sales represented about 11.6 percent of

Consumer's totals, by customer class. Over the past twelve months Consumer's retail open access program experienced growth of about 75 percent in terms of number of customers and 66 percent in number of MW served.

In Detroit Edison's Experimental Retail Access Program, during the first quarter of 2003, there was no degree of change. The program presently serves 5 meters and more than 68 MW. The program is slated to end June 30, 2004.

In Detroit Edison's Electric Choice Program, during the first quarter of 2003, about 260 MW of load was added to the program and 2000 more customers were served. Edison reported 1398 MW and 7261 customers in-service. That represented about 11 percent of Edison's peak load and 7.4 percent of kWh sales over the previous 12 months. Edison reports 45 residential customers being served by AESs at this time. Edison reports about 4.7 percent of commercial and 8.8 percent of industrial customers are now participating in electric choice. Kilowatt-hour sales in the Edison customer choice program are approximately 70 percent commercial and 30 percent industrial, with a very small fraction being residential. Over the past 12 months, commercial retail open access sales represented about 12.9 percent and industrial retail open access sales represented about 7.9 percent of Edison's totals, by customer class. Over the past 12 months, Edison's retail open access program experienced growth of about 205 percent in terms of number of customers and 150 percent in number of MW served.

Restructuring Follow-up Activities and Reports Issued:

Public Act 141 and Public Act 142 were enacted in June 2002. According to Public Act 141, Michigan's Customer Choice and Electricity Reliability Act, and Public Act 142, Michigan's Securitization Act, the Commission must reduce rates by 5 percent. Public Act 141 required the MPSC to file a report with the Governor and the Legislature by February 1st of each year. The reports were written each year as ordered. The reports contain valuable information such as:

- The status of competition for the supplying of electricity in Michigan;
- Recommendations for legislation, if any;
- Actions undertaken by the Commission to implement measures necessary to protect consumers from unfair or deceptive business practices by utilities, alternative electric suppliers, and other market participants; and
- Information regarding customer education programs, approved by the Commission, to inform customers of all relevant information regarding the purchase of electricity and related services from alternative electric suppliers.

According to a 2002 status report by the MPSC, there are a few indicators that can be used to measure or evaluate the status of competition in Michigan's electric supply market. These indicators include the number of authorized or licensed alternate electric suppliers, the amount of load and number of customers these suppliers are serving and the electric supply infrastructure within and outside Michigan available to support competitive entry. Following is a description of the indicators and the latest report of their status:

Experimental Retail Access Program - The Detroit Edison program is limited to 90 MW of load. The first customer started taking service on December 6, 1999. As of January 22, 2001, a total of

four retail customers with a total load of approximately 87 MW were being served under this program. The customers participating in this program were selected by lottery.

Electric Choice Program - On January 1, 2002, the ability for customers to choose generation service suppliers was unrestricted under this program. Capacity allocations for the phase-in period were awarded through a bid process. Parties' bids represented the amount they were willing to pay per kilowatt-hour, through December 31, 2001, toward the recovery of stranded cost associated with Detroit Edison's participation in the competitive electric market.

Electric Customer Choice - The participation limit for this program through December 31, 2001 is 750 MW which is approximately 12.5 percent of Consumer Energy's total load.

The latest report (1st Quarter 2003 Update) shows the impacts of Commission actions and state law to introduce competition into the electric industry by offering Michigan customers the choice to purchase their electric generation services from an AES as part of Customer Choice (or Retail Open Access, as used in the report). The number of customers choosing alternative suppliers has continued to increase, to a total of over 7,864 customers (using an average of 1,914 MW) as of March 2003. There are currently 21 licensed alternative electric suppliers in the state.

According to the PSC report, the Commission has no recommendations for legislation at this time. 2002 was the first year of a fully open Retail Open Access market. If the Michigan Retail Open Access market fails to fully develop, the Commission may recommend additional legislative remedies. Because the national electric energy market remains in a state of competitive flux, the Commission intends to continue to monitor and participate in the federal process. The Commission will then apprise the Governor and Legislature of any developments which may require further action.

Sources of Information:

- 1) Status of Electric Competition in Michigan 2001,
www.cis.state.mi.us/mpsc/electric/restruct/reports/comreport2001.pdf
- 2) Status of Electric Competition in Michigan 2002,
www.cis.state.mi.us/mpsc/electric/restruct/reports/comreport2002.pdf
- 3) Status of Electric Competition in Michigan 2003,
www.cis.state.mi.us/mpsc/electric/restruct/reports/comreport2003.pdf
- 4) EIA Status of Michigan Electric Industry Restructuring Activity,
http://www.eia.doe.gov/cneaf/electricity/chg_str/michigan.html
- 5) Michigan Electric Customer Choice,
<http://www.cis.state.mi.us/mpsc/electric/restruct/pa141.htm>
- 6) Status of Electric Customer Choice in Michigan,
<http://www.michigan.gov/mpsc/0,1607,7-159-16377-61010--,00.html>

MONTANA 2003 Restructuring Update

Current Restructuring Activities:

On October 27, 2000, the Montana Public Service Commission (MPSC) proposed to extend the restructuring transition period from July 1, 2002, to July 1, 2004. One of the biggest issues concerning Montana's restructuring was which company could be the main supplier during the transition phase of the restructuring.

On December 21, 2000, Order No. 6314 (the order extending the transition period) was issued by the MPSC ruling it was "appropriate and necessary" to exercise its authority to delay until July 2004 the move to full-fledged open access, since "certain customers could be disadvantaged due to the lack of competitive electricity supply markets if the transition period is not extended." Under the Commission's ruling, NorthWestern Energy (previously Montana Power Company) would continue to serve customers who had not chosen an alternative supplier during the extra two-year period, in effect establishing NorthWestern as the de facto default supplier.

House Bill (HB) 474, in conjunction with Senate Bill (SB) 19, was signed by the Governor on May 5, 2001, further extending the transition period for full retail access to July 1, 2007. HB 474 also allows customers being served by alternative suppliers to switch to the default supplier provided that the customer does not resell the electricity. In addition, HB 474 directed the MPSC to adopt a mechanism to ensure the default supplier may fully recover electricity supply costs in rates. Further, HB 474 established the Montana Power Authority and a consumer electricity support program. The Montana Power Authority is a seven member board appointed by the Governor with the consent of the Senate. The Montana Power Authority is responsible for developing long-term energy policy recommendations for the Governor and issuing revenue bonds to construct or purchase additional generation and transmission capacity in Montana.

In Spring 2003, the Governor signed HB 509, which provides that NorthWestern Energy will be the permanent default power supplier, and extends the transition period to 2027. In addition, the Governor signed SB 247, which gives the MPSC jurisdiction over NorthWestern's power supply agreements.

Restructuring Follow-up Activities and Reports Issued:

On October 27, 2000, the MPSC proposed extending the date for implementation of full customer choice of electricity suppliers from July 2002 to July 2004. The PSC cited as reasons for its proposal the lack of a competitive electricity supply market in the state and the need to ensure a firm power supply exists for NorthWestern Energy (previously Montana Power Company) retail customers at an affordable price. In support of its proposal, the MPSC cited these factors:

- While market activity within some customer segments was greater than in others, to date the percentage of all NorthWestern customers who had moved to choice is less than half of one percent¹⁶.

¹⁶FEMP December 2000 update,
<http://pnnl-utilityrestructuring.pnl.gov/Electric/ioustates/montana.htm>

- As of the October 2000 proposal, 23 of Montana's 25 rural electric cooperatives had opted not to restructure or offer retail choice. Only one competitive supplier was offering real alternative electricity supply products to NorthWestern's residential and small business customers and that supplier had recently informed its customers they would be returned to NorthWestern service because market prices were above regulated, rate moratorium prices.
- The Northwest Power Planning Council suggested that the demand-supply imbalance contributing to higher wholesale prices would likely persist for several years.
- The Federal Energy Regulatory Commission had yet to fully implement its goal of open, independent, regional electricity transmission systems, which are prerequisites for workable wholesale and retail electricity supply markets.
- Given the October 2000 and projected wholesale market prices, it was unlikely that competitive suppliers would be able to offer electricity to the majority of NorthWestern's retail customers at prices below rate-moratorium prices, which suggested it was very likely that electricity supply markets would not be workably competitive on July 1, 2002.

On November 20, 2002, NorthWestern Corporation announced that it had completed its previously announced plan to restructure its Montana utility operations as a division of NorthWestern Corporation. The restructuring involved the intracompany transfer of substantially all of the assets and liabilities of NorthWestern Energy, L.L.C. to NorthWestern Corporation. NorthWestern Energy, L.L.C. had substantially been comprised of the former Montana Power Company transmission and distribution business acquired by NorthWestern in February 2002.

Sources of Information:

- 1) FEMP, Restructuring Update for Montana,
<http://pnml-utilityrestructuring.pnl.gov/Electric/ioustates/montana.htm>
- 2) Montana PSC Docket No. D2000.10.177, (October 27, 2000, Proposal To Extend Implementation Of Full Customer Choice),
<http://www.psc.state.mt.us/pdf/D200010177RFCTP.pdf>
- 3) News Release: NorthWestern Corporation Completes Reorganization of Montana Utility Operations, <http://www.pressi.com/int/release/55921.html>
- 4) APPA Montana Restructuring,
<http://www.appanet.org/legislative/regulatory/staterestructuring/restruct2.cfm>

NEVADA 2003 Restructuring Update

Current Restructuring Activities:

The 71st Regular Session of the Nevada State Legislature adjourned on June 5, 2001. The 71st session highlighted electric deregulation in the state, and numerous bills were considered in light of the energy situation in the West (California). During this session, Nevada's Legislature voted unanimously to freeze electricity rates for a year, to halt the pending sale of generating plants and to completely stop plans to deregulate the electricity industry. This action was taken to avoid the type of disaster that happened to California utilities and customers. In July 2001, Nevada repealed its 1997 deregulation legislation. There are currently no competitive suppliers serving residential consumers. In July 2002, the Legislature passed and the Governor signed legislation to allow customers with demand of one megawatt or more the option to select a new energy supplier, with the approval of the Nevada Public Utilities Commission (NPUC) beginning in 2002. In April 2003, the NPUC allowed nine large commercial customers to purchase energy from alternative suppliers.

In July 2002 the NPUC issued an order allowing four casinos and one mall to purchase electricity from a Houston-based competitor, Reliant Resources Inc., beginning on November 1st. The order also set the amount that the five large companies must pay (\$4.2 million collectively) to leave Nevada Power's system. In August 2002, the Commission heard testimony from another casino operator that filed a request to purchase power from Reliant, an alternative power company. On June 16, 2002, Southern Nevada Casino Co. said it would begin buying electricity from suppliers other than Nevada Power. The move became effective October 1, 2002. Other large customers are expected to apply for permission to leave the Nevada Power system now that the NPUC has provided guidelines on how to calculate exit fees. The exit fees will compensate the utility and its remaining customers for revenue lost over the next three years.

Restructuring Follow-up Activities and Reports Issued:

Following is a summary of the major utility-related legislation passed during Nevada's last Legislative session.

Assembly Bill 369

AB 369 stopped the previously ordered sale of the utilities' power plants until 2003 and then only with the approval of the Public Utilities Commission of Nevada, if the commission agrees the sale is in the public interest. It halted electric deregulation in Nevada and restored Deferred Energy Accounting, letting the utility defer recovery of increased fuel and purchased power costs to a future period with a good certainty of recovery.

Assembly Bill 661

AB 661 was signed by the Governor on Tuesday, July 17, 2002. AB 661 increased the number of PUCN commissioners from three to five in October 2003 and transferred the State Energy Office, which will develop a state energy policy, to the Governor's Office. It created a \$10 million fund for low income assistance and weatherization programs. These funds will be derived from a new mill tax, or surcharge, on electric and gas consumption. Twenty-five percent of the monies will go to the Office of the Consumer Advocate for the weatherization programs; the other 75 percent will be handled through the newly transferred State Energy Office and distributed to consumers for

assistance with energy bills. It capped the mill tax at \$25,000 per quarter for large users. It gave customers with demand of 1 megawatt or more the option to select a new energy supplier beginning mid-2002. Customers who opt to use a different provider must apply to the PUCN and meet public interest tests.

Senate Bill 372

SB 372 revised standards for renewable energy sources, stating that 5 percent of a utility's portfolio must include renewables in 2003. This standard increases to 15 percent by 2013, with 5 percent of that being solar. Existing geothermal energy sources were included in the renewable portfolio. The PUCN must approve all contracts with renewable energy suppliers, and must consider the public interest in the approval process (i.e., weigh the cost of the contract and benefit to the environment and promotion of green energy with the resulting rates for consumers).

Senate Bill 362

SB 362 streamlined the Nevada generation and transmission permitting processes. State and local governments will conduct permitting processes concurrently, with a potential time savings of six months. This is not expected to negatively impact public input or environmental review.

Senate Bill 425

SB 425 prevents government entities from acquiring electric utility facilities without the utility's consent. If a company is in financial distress, a government entity can take over assets only if it is in the best interest of residents and if the action will be tax neutral.

Assembly Bill 197

AB 197 required each electric utility to disclose to its customers information about the company's energy mix, emissions, customer service and low income assistance. Information on regional mix is sufficient. The utility must provide this information twice yearly, as a bill insert and on the company website.

Sources of Information:

- 1) Sierra Pacific, New Laws Affect Nevada Utilities, <http://www.sierrapacificresources.com/news/features/spr/995007600.html>
- 2) National Energy Affordability and Accessibility Project Nevada Restructuring Web page, <http://neaap.ncat.org/restructuring/nv-re.htm>
- 3) International Brotherhood of Electrical Workers, Nevada Pulls The Plug on Deregulation, http://www.ibew.org/stories/01daily/0104/010424_Nevada.htm
- 4) Nevada Breaking News, <http://neaap.ncat.org/news/nv-bn.htm#Leave>

NEW HAMPSHIRE 2003 Restructuring Update

Current Restructuring Activities:

The transition period for phasing in restructuring is underway in New Hampshire and the state is currently implementing a competitive electric utility market for investor-owned utilities (power providers). The New Hampshire Public Utility Commission (NHPUC) approved the restructuring settlement with Public Service Company of New Hampshire (PSCNH) on September 8, 2000.

New Hampshire overcame the final obstacle to deregulating its largest electric utility on January 16, 2001, when the state Supreme Court rejected challenges to the plan. On May 1, 2001, electric deregulation went into effect for all PSCNH customers. PSCNH customers received a more than 11 percent, on average, rate reduction May 1, in addition to the 5 percent reduction from October 2000, completing an overall planned reduction in PSCNH rates of more than 16 percent. Customers now have the option of choosing an independent supplier of energy, while PSCNH continues to deliver the electricity to their home or business.

On January 25, 2002, Unitil Corporation, parent company of Concord Electric and Exeter & Hampton Electric, filed a comprehensive electric restructuring proposal with the NHPUC designed to implement the New Hampshire restructuring law and provide all of its customers with the right to choose their own electric energy supplier, if they wish. The proposal resulted in the restructuring of current power supply contracts, the combination of Unitil's two distribution companies (Concord Electric and Exeter & Hampton Electric) into one, and the recalculation of all rates and charges to customers. The NHPUC approved the proposal on March 14, 2003.

Restructuring Follow-up Activities and Reports Issued:

In March 2002, the Governor signed HB 681, which prohibits cramming by electric distribution companies. In April 2003, the Governor signed SB 170, which prohibits PSCNH from selling its fossil and hydro generating capacity until April 2006, when the utility's standard-offer service is scheduled to end.

The Standard Offer rate for 2002 for all PSCNH customers was 4.4¢/kWh. Starting February 1, 2003 the Standard Offer rate will diverge by customer class. It is expected that customers with less than 100kW demand will pay 4.6¢/kWh¹⁷.

The rate for customers with more than 100kW demand has not yet been set. State law specifies that these customers will pay the "just and reasonable prudent costs" of PSCNH for supplying this service. The NHPUC is considering including the cost of PSCNH's high-priced IPP contracts in the utility's generation mix when it considers the "costs" of service. The new standard offer rate could be as high as 6¢/kWh.

¹⁷Strategic Energy, Power for a Changing World. Regulatory Update
http://www.sel.com/Supply/Electricity/states/New_Hampshire/newhampreg.htm

There have been problems identified with the administrative details of serving in PSCNH territory, such as registration, billing, and Electronic Data Interchange. The NHPUC has drafted rules to address the problems, but the state requires that the rules must first go through an administrative hearing at a Joint Legislative Committee before being approved. Until there is a final rule draft, there are no official rules for registering as a supplier in PSCNH's territory. However, the NHPUC is willing to register suppliers on a case-by-case basis, pending approval of the rules.

In January 25, 2002, Unitil Corporation, parent company of Concord Electric and Exeter & Hampton Electric, filed to merge the two distribution companies. Unitil's settlement with the NHPUC delayed the restructuring of its two utilities, Exeter & Hampton Electric and Concord Electric, until May 2003, instead of November 2002 as originally planned. Under the new restructuring plan, the NHPUC will approve the merger of the two subsidiaries into a single distribution utility with about 68,000 users. Unitil will then sell its current supply portfolio of about 180 mW and contract for an energy supplier for a three-year transition period¹⁸. The NHPUC will review the portfolio and energy purchase contracts and clear the way for full competition to start May 2003. The merger of the two companies, known as Unitil, became effective in March 2003.

New Hampshire's restructuring law authorized System Benefit Charges (SBC) to fund energy efficiency, renewable energy and low-income programs, but only energy efficiency and low-income programs have been funded so far. The portion of the SBC for low-income electric bill assistance is expected to raise \$13.2 million annually once competition is fully underway. Currently, interim rate assistance programs are operated by most utilities. The energy efficiency portion of the SBC raises about \$6.9 million annually¹⁹.

Sources of Information:

- 1) APPA, New Hampshire Restructuring Web page, <http://www.appanet.org/legislativeregulatory/staterestructuring/restruct3.cfm>
- 2) PUC Order No. 24,139 re: Unitil Proposal To Restructure Companies, <http://www.puc.state.nh.us/Orders/2003orders/24139e.pdf>
- 3) Strategic Energy, Power for a Changing World Regulatory Update, http://www.sel.com/Supply/Electricity/states/New_Hampshire/newhampreg.htm
- 4) NEAPP, New Hampshire Restructuring, <http://neaap.ncat.org/restructuring/nh-re.htm>
- 5) NEAPP, Public Benefits of Restructuring, <http://neaap.ncat.org/restructuring/nh-re.htm>

¹⁸NEAPP, New Hampshire Restructure, <http://neaap.ncat.org/restructuring/nh-re.htm>

¹⁹NEAPP Public Benefits of Restructure, <http://neaap.ncat.org/restructuring/nh-re.htm>

NEW JERSEY 2003 Restructuring Update

Current Restructuring Activities:

The transition period for phasing in restructuring has begun in New Jersey and the state is currently implementing a competitive electric utility market for investor-owned utilities (power providers).

In December 2001, The New Jersey Board of Public Utilities (BPU) approved a February 2002 Internet electricity auction. The eight-day auction attracted 20 electric suppliers, bidding for 100 MW "slices" of a total 18,000 MW. Fifteen suppliers won the bids to supply energy to New Jersey's four incumbent electric utilities. The energy will be used to serve customers who do not select an alternative electric supplier and will be supplied from August 1, 2002 through July 31, 2003.

In August 2002, Governor James McGreevey vetoed a bill that would have allowed the four New Jersey utilities to recover money lost when the state deregulated its electricity market. Instead, the Governor created a panel to study how those losses were accrued, what steps utilities took to mitigate costs, and what the merits are of recouping those costs through issuing bonds and increasing rates, as the utilities have proposed.

In November 2002, the BPU hired two accounting companies to perform audits of nearly \$1 billion in expenses that New Jersey's four electric utilities said they were entitled to recover from customers. The money represents the difference between what the companies paid for electricity from outside suppliers and what they were allowed to charge while rates were capped during the four-year transition period into a deregulated market that ends August 1, 2003.

In February 2003, Governor James McGreevey signed a bill designed to make it easier for municipalities to represent their residents and negotiate for them to get lower gas and electric rates. The bill requires energy companies to notify customers when a municipality is seeking to form an energy-buying pool.

Restructuring Follow-up Activities and Reports Issued:

Senate Bill 869 was enacted on September 9, 2002, and was effective immediately. SB 869 gives the BPU the discretionary power to allow the utilities to issue "transition bonds." These bonds will allow Conectiv, Jersey Central Power & Light, Public Service Electric & Gas and Rockland Electric to recover nearly \$1 billion in "deferred balances" as a result of the rate cap.

On August 30, 2002, the Deferred Balance Task Force released its Report and appendices to Governor McGreevey, who established the task force by Executive Order on July 31, 2002. The report stated that the four-year rate caps have caused enormous deferred balances. Under New Jersey's restructuring legislation, ratepayers are required to repay "reasonably incurred deferred balances." The task force made five recommendations: 1) sign Senate Bill 869; 2) apply strong consumer protections; 3) aggressively mitigate further accumulation of deferred balances; 4) mandate bill inserts to educate consumers about deferred balances; and 5) examine broader changes in the Electric Discount and Energy Competition Act (EDECA), New Jersey's restructuring

legislation, and its implementation.

Sources of Information:

- 1) EIA Status on New Jersey Electric Industry Restructuring Activity,
http://www.eia.doe.gov/natural_gas/restructure/state/nj.html

- 2) FEMP, Electric Utility Restructuring Status,
<http://pnnl-utilityrestructuring.pnl.gov/electric/ioustates/newjersey.htm>

NEW MEXICO 2003 Restructuring Update

Current Restructuring Activities:

A February 14, 2001, Associated Press article stated that the New Mexico State Senate tentatively approved a measure that would delay electricity restructuring for five years. This legislation became known as SB 266, and was signed by the Governor in March 2001. The measure moved the new start date for deregulation to January 2007. The law also provided that Public Service Company of New Mexico (NMPSC) could not unbundle its supply and distribution services until September 2005, allowed NMPSC to build merchant power plants in the state, and required the Public Regulation Commission to approve NMPSC's proposed holding company structure by July 2001. Other measures of the law delayed Public Service of New Mexico's unbundling of its distribution from its generation and marketing businesses and allowed the utility to proceed with plans to build new generation and form a holding company. NMPSC originally opposed a five-year delay because it created more uncertainty for utilities planning for the future, but modifications to the measure made it acceptable to the utility.

SB 718 (Public Utility Transition Cost Recovery Act), introduced in February 2003, repealed the 1999 state restructuring law and allowed utilities to recoup transition costs incurred preparing for restructuring. The bill passed the Legislature unanimously and was signed into law by Governor Bill Richardson on April 8, 2003. By repealing the Restructuring Act, the bill also repeals the system benefits charge and fund, which would have charged all retail consumers a \$0.0003 per kilowatt-hour usage fee to be deposited into the fund. Estimates were that the fee would have generated \$6 million per year for low-income energy assistance and for renewable energy and energy efficiency projects to be installed at public facilities.

In addition to repealing the Restructuring Act, SB 718 made several revisions to other statutes as detailed below:

- Allowed a public utility to own a generating plant that does not provide retail service to New Mexico customers, the cost of which is not included in retail rates and the business activities for which are not subject to regulation by the Public Regulation Commission;
- Specified that a public utility shall not be required to functionally separate its electric and gas operations from each other;
- Allowed a distribution cooperative utility organized pursuant to the laws of another state, and providing bundled services in New Mexico on April 1, 1999, to not more than 20 percent of its total customers, to file an application with the Commission seeking approval of its election to be governed by the laws related to electric restructuring of the state where the utility was organized; and
- Removed the Public Utility Act from the delayed repeal of July 1, 2003.

NMPSC, the state's largest utility, agreed to support the cancellation of deregulation during negotiations on a \$35 million customer rate reduction over five years. The Public Regulation Commission approved a stipulation that reduced rates for most customer classes by 4 percent

effective September 1, 2003, and another 2.5 percent reduction two years later. These reduced rates will remain in effect until January 1, 2008.

Restructuring Follow-up Activities and Reports Issued:

On April 8, 1999, SB 428 was signed by the Governor. Residential and small business customers could choose suppliers beginning January 1, 2001, with choice provided for all customers January 1, 2002. There were no guaranteed rate caps or reductions. On December 17, 2002, the New Mexico Public Regulation Commission issued a Notice of Proposed Rulemaking (NOPR) to increase the amount of renewable energy utilities provide to their customers. If the NOPR is adopted, utilities would be required to increase their renewable portfolio standard to 4 percent by January 1, 2004, 7 percent by January 1, 2007, and finally 10 percent by January 1, 2010. According to the NOPR, no one renewable energy source can make up “more than 50% of the portfolio of any utility.”

Sources of Information:

- 1) National Energy Affordability and Accessibility Project, Restructuring Update, <http://neaap.ncat.org/news/nm-bn.htm>
- 2) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/new_mexico.html
- 3) American Public Power Association, Electric Restructuring Update, www.appanet.org/legislativeregulatory/staterestructuring/restruct3.cfm
- 4) Associated Press article, February 14, 2001, http://www.eere.energy.gov/electricity_restructuring/weekly/feb16_01.html
- 5) New Mexico Senate Bill 718, <http://legis.state.nm.us/Sessions/03%20Regular/FinalVersions/senate/SB0718.pdf>

NEW YORK 2003 Restructuring Update

Current Restructuring Activities:

Unlike most other states, New York implemented retail electric restructuring through administrative decisions by the Public Service Commission (NYPSC), not by statute. On March 14, 2001, the NYPSC approved plans to allow residential, small business, commercial, and industrial customers to start buying their natural gas supply from sources other than the traditional utility companies within the same year. The Commission issued orders and approved restructuring settlements to phase in retail electric competition for all customers, but implementation has varied among the different electric utilities.

In all of its restructuring decisions, the Commission required the local electric utility to provide default service, referred to as the provider-of-last-resort, at least during the transition period. The term of the default service varies by individual utility settlements. In most decisions, the settlement resulted in either a rate freeze or modest rate reductions for residential customers.

Unlike other utilities, Consolidated Edison (Con Ed) asked to provide default service through the wholesale market and pass through this rate every month. Because the plan allowed Con Ed to pass through its actual wholesale power fuel costs, it resulted in volatile prices and significant rate increases beginning in the summer of 2000. Upstate New York utilities, such as New York State Electric & Gas Corporation (NYSEG) and Niagara Mohawk, proposed multi-year rate plans, which locked in prices for generation service six to eight years while allowing customers to seek lower prices in the competitive market. This will substantially lengthen the transition period for these utilities.

Restructuring Follow-up Activities and Reports Issued:

On November 8, 2000, the Federal Energy Regulatory Commission (FERC) voted to extend indefinitely an existing price bid cap for the New York Independent System Operator's (NYISO) 10-minute non-spinning reserve markets. The FERC, which voted 3-1 in favor of the order, said the bid cap would stay in place until NYISO demonstrates that it has made changes to make its markets "workably competitive." The FERC order also called on the NYISO to conduct a technical conference for addressing and correcting the market's flaws.

In February 2001, state regulators, trying to increase competition for NYSEG electric customers, approved major changes in the way rates were calculated for its customers who buy power from another supplier. The change, which took effect in early February 2001, eliminated the fixed credit granted to NYSEG consumers who buy their electricity from an independent supplier and replaced it with a new, flexible credit that is based on prices in the state's wholesale electric market. Because the new credit is based on market prices, state regulators said marketers should have an easier time developing offers that could save money for consumers, whose bills essentially are divided into two parts: the cost of electricity and the price of delivering the power and providing other services.

In March 2001, the NYPSC approved rules for customers in the NYSEG territory to receive a credit for switching to a competitive electricity supplier. The old "shopping credit" was set at 3.71 cents

per kilowatt-hour, which was below market prices. Competitors could not beat that price with market prices consistently being higher. The new "shopping credit" was tied to the going market price plus a small amount for administrative costs, making it easier for competitors to deal with wholesale prices that fluctuate seasonally. The market-based shopping credit was expected to entice more customers to switch suppliers.

In June 2001, the NYPSC approved standards governing the electronic exchange of routine business information and data among electricity and natural gas service providers in New York. The PSC also issued an order to establish uniform retail access billing and payment processing practices that will facilitate a single bill option for customers who buy power and/or natural gas from electric service companies. These orders are designed to facilitate retail energy competition in New York and provide for efficient single-billing options for all New York electricity and natural gas customers.

In January 2002, the state controlled Long Island Power Authority opened its market to retail competition. In December of that same year, Governor Pataki signed the Energy Consumer Protection Act, passed unanimously by the state Legislature in June 2002, requiring electric and natural gas suppliers to comply with HEPFA, a residential consumer protection statute applicable to utilities. As of January 2003, 319,280 of the state's 6.4 million residential electricity customers (about 5 percent) eligible for choice have switched to new suppliers. Of these, 137,969 were in the Con Ed territory (which serves New York City), the largest number of any New York utility²⁰.

Sources of Information:

- 1) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/new_york.html
- 2) National Energy Affordability and Accessibility Project, Restructure Update, <http://neap.ncat.org/restructuring/ny-re.htm#Legislation>
- 3) FEMP, Electric Utility Restructuring Status, <http://pnnl-utilityrestructuring.pnl.gov/Electric/ioustates/newyork.htm>

²⁰National Energy Affordability and Accessibility Project, New York : Choice Status

OHIO 2003 Restructuring Update

Current Restructuring Activities:

On August 30, 2001, the Public Utilities Commission of Ohio (PUCO) initiated a rule-making proceeding to develop a process for establishing a market-based standard service offer and a competitive bidding process. Comments from interested parties were heard on February 20, 2003. The PUCO intends to adopt rules to be implemented in 2003 that will establish a market-based standard service and a competitive bidding process.

In January 2002, the Ohio Consumers' Council (OCC) recommended the state work out a plan to attract more alternative suppliers in less competitive areas of the state; issue competitive bidding rules at the end of the transition period; develop more conservation and energy efficiency programs and policies; and implement a regional transmission organization. On the federal level, the council recommended monitoring mechanisms to curb market power, and guaranteeing adequate wholesale power reserves.

Restructuring Follow-Up Activities and Reports Issued:

In May 2003, a report by the Public Utilities Commission of Ohio entitled The Ohio Retail Electric Choice Programs, Report of Market Activity, 2001-2002, was issued to the Ohio General Assembly. The report noted that in spite of California's electric restructuring problems, Ohio continued ahead with its programs. The report stated that the biggest success of the program thus far has been aggregation. More than 150 local governments passed ballot issues and received PUCO certification to band together and purchase electricity, in bulk, for their residents. Aggregation programs account for nearly 93 percent of residential customer switching, more than 88 percent of commercial customer switching, and nearly 20 percent of industrial customer switching. The PUCO has established a Market Monitoring Division to ensure fair and orderly markets. The division is equipped with the latest in technology to stay informed on events happening locally, regionally, and nationally that may impact the economical flow of electricity to customers. The report mentions the PUCO believes the makings of a vital retail market are in place, which include a commitment to nurture the development of retail electric choice, statutes providing the PUCO administrative powers to correct the course if necessary, and strong support by the Ohio General Assembly.

During the summer of 2002, the PUCO issued a comparison report between electric restructuring in California and in Ohio. This report was produced to help educate Ohio electric customers who were concerned about electric restructuring in Ohio. The main points of the report pointed out Ohio's electric restructuring has been successful as compared to California because long term contracts are permitted, direct contracts are easier to execute because institutional requirements are not as complex, no mandatory Power Exchange (PX) structure is required, better anticipation of growth in demand, and no transmission constraints.

In January 2003, the OCC issued a report entitled 2002 End-Of-Year Update On Ohio's Electric Market. The report states that as Ohio begins its third year of retail electric competition, the OCC sees continuing cause for concern about the health of the state's electric marketplace and the potential long-term risks for Ohio's residential electric consumers. When the electric market was opened to competition in 2001, the PUCO certified 38 suppliers to sell electricity to all customer

classes. By the end of 2002, just 2 suppliers were actively marketing to the state's residential customers. As the third year begins of what for most Ohio consumers is a temporary 5 year market development period, there is increasing concern about lack of meaningful retail competition in Ohio. In 2003, the OCC believes the state must address these issues:

- What happens if there are few or no competing electric suppliers when the market development period ends?
- What price protections will consumers have when the current rate freeze disappears no later than December 31, 2005?
- What state actions will be taken to break the logjam over regional transmission lines that threaten both the reliability and affordability of electricity for Ohio consumers?

According to the January 2003 report, answers to these questions and others will determine whether electric choice ultimately works for the benefit of Ohio consumers.

Sources of Information:

- 1) Public Utilities Commission of Ohio, <http://www.puc.state.oh.us/puco.cfm>
- 2) Federal Energy Management Program, <http://pnnl-utilityrestructuring.pnl.gov/>
- 3) Edison Electric Institute, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 4) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislativeregulatory/>
- 5) National Association of Regulatory Utility Commissioners, Electric Restructuring, Update, <http://www.naruc.whatsup.net/clients/naruc/naruc.nsf/>
- 6) Energy Information Administration, Electric Restructuring Update, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 7) Triad Research Group, 2002 Research Report, The Ohio Electric Choice Consumer Education Campaign, <http://www.ohioelectricchoice.com/newsreleases/2K2OECResearchReport.pdf>
- 8) Ohio Consumers' Counsel, 2002 End-of-Year Update on Ohio's Electric Market, <http://www.pickocc.org/news/182003.shtml>

OKLAHOMA 2003 Restructuring Update

Current Restructuring Activities:

Oklahoma State Bill (SB) 500 was enacted in April 1997. It set forth principles for restructuring, established studies to be completed and set July 1, 2002, as the start date for retail choice. After California's problems became public, Oklahoma began to question their electric choice program. In April 2001, the legislature passed an emergency bill to delay restructuring until it could be studied further. The bill also required passage of enabling legislation to restart restructuring and established a study group to examine restructuring and the state's transmission infrastructure.

In June 2001, the Governor signed SB 440, which established the Electric Restructuring Advisory Committee to make recommendations on retail choice by the end of 2002. SB 440 requires additional legislation to implement retail choice. Retail choice can begin only after the Electric Restructuring Advisory Committee makes its report and enabling legislation is enacted. The report has not yet been completed.

Restructuring Follow-Up Activities and Reports Issued:

SB 440 established a tax credit for generation produced by zero emission facilities. These are defined as facilities, 50 MWs or greater, located in Oklahoma, that are fueled by wind, moving water, sun or geothermal energy and that began operations after June 4, 2001. Credits decline from \$.0075 per kWh until 2004, to \$.0025 per kWh between January 2007 and January 2012.

The Oklahoma Corporation Commission (OCC) sponsored a two phase study to be completed by the Oak Ridge National Laboratory (ORNL). The purpose of the study was to build an independent model of the energy market in Oklahoma to provide a better tool to evaluate proposals of the industry and policymakers on Oklahomans and the Oklahoma economy. The model developed by Oak Ridge would also be an important energy planning tool to determine the impact of new generation, need for transmission and other energy management tools in the future. The OCC believed the study would help to establish an unbiased baseline model which would allow decision makers to test and understand the consequences of various options as they evaluate how to best proceed in the complicated area of electric restructuring. Phase I of the study, completed in March 2001, built an econometric model specifically for Oklahoma to take a close look at the energy market in the near-term using 1999 figures on generation and customer demand. Phase II, completed in October 2001, provided a longer-term analysis reaching ten years into the future by incorporating the potential for new generation resources, transmission and customer responses.

The October 2001, Phase II Study by the ORNL concluded that the economic impact of restructuring the electric power industry could be relatively modest or could raise prices to consumers. A key difference will be how the restructuring will take place; including what plants are included in the restructuring, how costs or prices are communicated to consumers, and whether capacity additions are in line with expected growth in demand.

According to the study, any restructuring must take into account that many of the existing plants have costs well below market rates. The benefits of the difference between cost and market prices are currently received by consumers since the plant's production is priced at cost plus a reasonable return. Policy makers will need to address how this future price and cost difference is shared

between the state's consumers and the owners of the facilities. It appears that the announced new plants to be constructed in the state are well in excess of the internal needs of the state and more than the transmission system can effectively export. Delays or cancellations are likely in order to prevent a glut on the market. The study stated that customer response to real-time prices and competition in external markets could further reduce the need for new plants. Information such as this study, and evaluation of the market by developers and the OCC, could help to avoid the worst of any market volatility due to an imbalance between supply and demand. An earlier study in June 2001 done by the ORNL for the OCC had concluded that immediate deregulation would increase prices by 18 percent²¹.

Sources of Information:

- 1) Oklahoma Corporation Commission, <http://www.occ.state.ok.us/>
- 2) Oak Ridge National Laboratory, <http://www.ornl.gov/ORNL/BTC/Restructuring/OKRestructure2.pdf> Phase I Report. <http://www.ornl.gov/ORNL/BTC/Restructuring/OKPhaseIIforWeb1.pdf> Phase II Report.
- 3) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 4) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 5) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislativeregulatory/>
- 6) FEMP, Electric Utility Restructuring Status, <http://pnnl-utilityrestructuring.pnl.gov/>

²¹ Hadley, S.W.; Hudson, C.R.; Jones, D.W., The Potential Economic Impact of Electricity Restructuring in the State of Oklahoma, Phase I Report, Oak Ridge National Laboratory, March 2001.

OREGON 2003 Restructuring Update

Current Restructuring Activities:

Under SB 1149, electric choice was originally slated to begin on October 1, 2001. The 2001 legislative session passed HB 3633 which delayed the start of electric choice until March 1, 2002, and required utilities to offer all customer classes a cost-of-service rate option until at least July 2003. HB 3633 established a restructuring plan for investor owned electric utilities. This restructuring plan did not require them to sell off their generation assets nor were they obligated to meet customers' remaining electric requirements through often high-priced, short-term power contract purchases. The bill introduced more energy supply options for all customers and competition in electricity supply for business customers. Residential and small business customers were offered a portfolio approach or a menu of rate options from their incumbent utility including market-based and renewable resource choices. They may choose between a basic service rate or five other electricity supply options from their current utility. As of February 2003, 1.2 million customers were eligible to choose portfolio options. Of these customers, 9,841 signed up for fixed renewable, 18,644 for renewable usage, 6,402 for habitat, 3,384 for time of use, and 1,202 for seasonal flux. About 3.2 percent of eligible residential customers signed up for alternative rate options as of February 2003²².

Restructuring Follow-Up Activities and Reports Issued:

As required by law, the Oregon Public Utility Commission issued in December 2002 a report titled Evaluation of a Competitive Market for Residential Consumers. The report stated that its residential customers would not benefit from electric competition. Reasons cited for this conclusion include:

- Few, if any, suppliers are expected to compete in the residential market. Customer acquisition and administrative costs are high. Combining consumers into a buying group makes them more attractive to serve, but aggregation has not developed in Oregon.
- The cost of implementing a competitive power market for residential consumers exceeds the likely benefits. Education programs, changing utility information management, accounting and billing systems, responding to customer inquiries, resolving complaints, switching and billing problems, and overseeing suppliers and marketers is costly when only a small percentage of residential consumers switch.
- Competitive power markets for residential consumers have not been in place long enough in other states to learn from their experiences. California has suspended restructuring and of the states where retail competition is occurring, 17 have seen electric rates decline, but that is largely the result of mandating rate reductions for regulated utilities and requiring competing offers to be lower during the transition to competitive markets. What is unknown is what will happen when these provisions expire. Oregon has yet to see how well competition will work for even the largest business customers.

²²U.S. Department of Health and Human Resources, The Administration for Children and Families, National Energy Affordability and Accessibility Project, Restructure Update on the State of Oregon, May 7, 2003.

- Residential consumers are not well suited to assess or manage the risks of a competitive retail power market that is just beginning to develop and consumer protection remains a concern. Residential consumers are not knowledgeable about energy procurement and are not willing to spend time to gain knowledge. Because electricity is a necessity, consumers could be subject to price swings tied to a volatile wholesale market. They could run into additional problems if they have trouble resolving a billing problem involving more than one company.
- New utility rate options give residential consumers meaningful choices without the risks of a competitive power market. New power options such as time-of-use, seasonal flux, fixed renewable, renewable usage and habitat have allowed consumers to save money in the safety of a regulated environment and they remain with the same regulated utility service. There is no risk of being dropped by an electricity supplier and rates cannot be increased without PUC approval.

Sources of Information:

- 1) Oregon Public Utility Commission, <http://www.puc.state.or.us/erestruc/Default.htm>
- 2) FEMP, Electric Utility Restructuring Status, <http://pnnl-utilityrestructuring.pnl.gov/>
- 3) National Energy Affordability and Accessibility Project, Restructure Update, <http://neaap.ncat.org/profiles/>
- 4) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 5) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 6) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislativeregulatory/>
- 7) NARUC Energy Regulatory Database, <http://www.naruc.whatsup.net/clients/naruc/naruc.nsf/>

PENNSYLVANIA 2003 Restructuring Update

Current Restructuring Activities:

In June 2001, the Public Utilities Commission (PUC) approved a settlement with General Public Utilities, Inc. (GPU) and First Energy Corp (a merger was completed in November 2001 between the two) that preserves customer rate caps, encourages customer participation in choosing alternative generation suppliers, and increases support for renewable energy and conservation programs. Distribution rate caps were extended to 2005. Total generation rates continue at the same levels through 2010. There are no rate hikes for customers under the settlement. GPU will be allowed to defer all past losses and all future losses through 2005 and carry them on its books through 2010. The settlement, which also extended stranded cost recovery, was rejected by the Commonwealth Court of Pennsylvania in February 2002 and jurisdiction over this matter was returned to the PUC.

In March 2003, the staff of the PUC reconvened the Provider of Last Resort Working Group to begin developing proposed rules that define duties and rights of providers of last resort in the electric industry. Efforts of the group will be focused on defining the electric distribution companies' continuing obligations to connect, deliver and acquire electricity; establishing a method for determining prevailing market prices; and creating a mechanism for the full recovery of all reasonable costs by the electric distribution companies. According to the PUC, development of the regulations should consider the costs and risks borne by electric distribution companies and ensures that consumers receiving generation service from electric distribution companies have appropriate levels of protection from the volatility of the wholesale market.

Restructuring Follow-Up Activities and Reports Issued:

In November 2001, the PUC opened an investigation into wholesale power markets. The PUC subsequently found evidence that Pennsylvania Power & Light Electric Utilities (PPL) unfairly manipulated wholesale electricity markets in early 2001 which damaged wholesale markets and the public's confidence in them. The PUC has referred the case to the U.S. Department of Justice, the Federal Energy Regulatory Commission, and the Pennsylvania Attorney General for appropriate action. This case is still open pending completion of the investigation.

Pennsylvania has price caps on both the generation and the transition and distribution portions of rates. Rates for customers, who do not choose a new generation supplier, for transmission and distribution service are capped at January 1, 1997 levels. Rates for generation, including transition charges (or stranded costs), are capped at January 1, 1997 levels. The duration of the rate caps varies by utility, some generation rate caps are in place until 2008 or 2010, or until the utility's stranded costs are paid off, whichever is shorter. So far, only one utility, Duquesne Light, has paid off its stranded costs. It did so in March 2002. As a result, Duquesne Light has eliminated the competitive transition charge from its bills, and its rates were reduced by 16-20 percent as of March 2002. Most distribution utilities have extended their distribution rate caps until 2003 or 2005, or until the utility's stranded costs are paid off, whichever is shorter.

In April 2000, competitive suppliers were providing about 8,000 megawatts of electricity to

businesses and residents, which is approximately 33 percent of the state's electric power. As of April 2003, competitive suppliers provided only about 2,000 megawatts of electricity, or about 8 percent of the state's electric power. Many of the suppliers have found the market to be unprofitable and have left the area. A fourth of the startup electricity suppliers have dropped out of the market and 44 percent of people using alternative suppliers have switched back to big utilities. The number of customers served by alternative suppliers has declined since April 2001, when the number peaked at 708,071 residential customers (out of 4.7 million eligible residential customers). As of April 2003, alternative suppliers were serving 245,387 residential customers²³.

Sources of Information:

- 1) Pennsylvania Public Utility Commission,
http://puc.paonline.com/electric/electric_main.asp
- 2) Indiana Utility Regulatory Commission, States Electric Choice Programs,
<http://www.in.gov/iurc/issues/restruct/restruct.pdf>
- 3) National Energy Affordability and Accessibility Project, Restructure Update,
<http://neaap.ncat.org/profiles/>
- 4) Energy Information Administration, Electric Restructuring,
http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 5) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002,
http://www.eei.org/issues/comp_reg/state_comp.pdf
- 6) American Public Power Association, Electric Restructuring Update,
<http://www.appanet.org/legislativeregulatory/>
- 7) NARUC Energy Regulatory Database,
<http://www.naruc.whatsup.net/clients/naruc/naruc.nsf/>
- 8) FEMP, Electric Utility Restructuring Status, <http://pnnl-utilityrestructuring.pnl.gov/>

²³National Energy Affordability and Accessibility Project, Pennsylvania News and Analysis, October, 2002.

RHODE ISLAND 2003 Restructuring Update

Current Restructuring Activities:

On June 18, 2002, bill H 7786 was passed which amends the state's public utilities law to allow for municipal aggregation. The law also supports renewable energy and self-generation, enhances state agency's oversight capabilities by increasing the Public Utility Commission (PUC) from three to five members and requiring electronic filing of certain documents, and more specifically defining the role of public utilities. The law also revises the state's restructuring law by making changes to standard-offer and last-resort services. Now utilities can offer a variety of last-resort options, the PUC can approve the return of non-residential customers to standard-offer service at rates set through a bidding process and utilities can hedge fuel cost risk in standard-offer rates.

On April 2, 2003, the Rhode Island Renewable Energy Fund announced that twenty Rhode Island businesses and educational institutions formed a group representing 400 million kilowatt-hours of annual electricity consumption to explore renewable energy in the state. The group plans to evaluate purchasing options, meet with vendors, solicit and evaluate proposals, and then purchase renewable energy, either individually or in aggregate.

Restructuring Follow-Up Activities and Reports Issued:

As required by law, the Rhode Island Public Utilities Commission issued a report entitled Report of the Rhode Island Public Utilities Commission on Electric Restructuring on February 28, 2001.

Topics covered in the report included:

- Developments in competitive power supply market in Rhode Island
- Estimated savings realized by customers as a result of the introduction of retail competition in the power supply market
- Progress towards implementation of a regional transmission agreement for New England and other reforms implemented by the regional power pool
- The status of electric industry restructuring activities in other New England states
- Recommendations for statutory changes

The report stated that most customers remained in the standard offer option and savings to all customers was minimal. The report mentioned price spikes and possible market power abuses by the New England Independent System Operator (ISO-NE) and PUC investigators began to review price data. According to the report, the New England area is experiencing a surge in construction of new generating capacity from 2000 to 2005. Most of the units are gas fired which concerns PUC officials since the supply and price of natural gas is becoming more of a factor in the price and generation of electricity in New England. Market power in the gas markets also becomes more of a concern.

In September 2001, the PUC approved decreases in provider of last resort rates and standard-offer rates and in November 2002, lifted the floor on provider of last resort service rates, which will now be based on fixed-price bids.

In May 2001, the Rhode Island House of Representatives passed a resolution calling for a review of the state's restructuring law because of increased prices (as much as 30 percent) for electricity in the state. Rates did decline eventually and the legislature has not taken any further action on the issue. Concurrently, the Rhode Island Senate passed SB 881, an act that would give non-residential customers enrolled in provider of last resort service the option to return to standard offer service. These customers would be required to sign a 2 year agreement prohibiting self-generation during non-emergency conditions and remarketing of purchased electricity.

Sources of Information:

- 1) RIPUC - Rhode Island Public Utility Commission,
<http://www.ripuc.state.ri.us/energy/index.html>
- 2) Indiana Utility Regulatory Commission, States Electric Choice Programs,
<http://www.in.gov/iurc/issues/restruct/restruct.pdf>
- 3) National Energy Affordability and Accessibility Project, Restructure Update,
<http://neaap.ncat.org/profiles/>
- 4) Energy Information Administration, Electric Restructuring,
http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 5) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002,
http://www.eei.org/issues/comp_reg/state_comp.pdf
- 6) American Public Power Association, Electric Restructuring Update,
<http://www.appanet.org/legislative/regulatory/>
- 7) NARUC Energy Regulatory Database,
<http://www.naruc.whatsup.net/clients/naruc/naruc.nsf/>
- 8) FEMP, Electric Utility Restructuring Status, <http://pnnl-utilityrestructuring.pnl.gov/>
- 9) Energy Central Professional, State Deregulation Status,
<http://pro.energycentral.com/membership/tour.cfm> This is a subscription site,
information is listed under industry data.

TEXAS

2003 Restructuring Update

Current Restructuring Activities:

In February 2001, the Texas Public Utilities Commission (PUC) issued revised Price-to-Beat rules for utility service to customers who did not choose an alternative supplier. The rules allow the price to be adjusted to reflect changes in fuel or wholesale power prices. In March 2001, the PUC approved reliability rules, which included a temporary bid cap of \$1,000 per MWh for the Electric Reliability Council of Texas (ERCOT).

In October 2001, the PUC delayed retail choice in the Texas panhandle area covered by the Southwest Power Pool. The PUC said the lack of an RTO in the panhandle region, no retail electric suppliers and wholesale electricity markets in the area as not yet competitive were the primary reasons. One month later, the PUC accepted a settlement delaying implementation of retail access in Southeast Texas. Again, the PUC cited a lack of an RTO in this region and the absence of marketing by retail service providers as the primary reasons for the decision.

The Price-to-Beat was the regulated price set by the PUC in December 2001 for the six utility-affiliated retail electric providers in the state. Customers who did not chose to switch to an alternative retail electric provider continued to receive full service from their utility-affiliated provider. Rates for residential customers were cut by at least 6 percent on January 1, 2002. The fuel rate portion is the January 1999 fuel rate minus 6 percent adjusted for changes in fuel costs. In January 2002, the market opened with an overall rate reduction of about 15 percent. The Price-to-Beat has a rate cap until January 2007 and a rate floor until January 2005 or until an affiliated Retail Electric Provider (REP) loses 40 percent of customers. The difference between the Price-to-Beat and the market price is refunded to customers in 2004 if the affiliated REP does not lose 40 percent of its customers. Built into the Price-to-Beat are the changes in natural gas prices. This allows a rise in price as gas prices rise which helps affiliated REPs to cover costs and other REPs to make competitive offers.

In March 2003, the PUC through its rulemaking process modified the rules for Price-to-Beat governing fuel cost adjustments for utilities allowing them to pass cost increases on to customers in a shorter amount of time. Most utilities increased the Price-to-Beat in 2002 and again in 2003.

Restructuring Follow-Up Activities and Reports Issued:

Texas has a somewhat unique public relations campaign to address the electric restructuring in that state. Frequently, the Chairman of the Public Utilities Commission will give a speech to talk about restructuring activities, how it is progressing, what has been successful, what needs to be addressed and how the customer base is reacting. The speech is usually short, no more than an hour, slides are used in the presentation and the frequency has been at least one per quarter and more often if an important issue needs to be addressed. The target audience usually includes other public utility commissions, energy professionals, analysts and the customers themselves.

In January 2003, the Public Utility Commission of Texas issued its report to the 78th Texas

Legislature entitled the Scope of Competition in Electric Markets in Texas. As the report states, retail competition for all customers served by investor-owned utilities in the Electric Reliability Council of Texas (ERCOT) began on January 1, 2002. The Commission's estimates in this report show that retail customers have saved, at a minimum, over \$1.5 billion in electricity costs during the first year of competition as compared to the regulated rates in effect during 2001. In all areas open to competition, there were multiple REPs offering service to all customer classes, with as many as ten REPs offering service to residential customers in some areas. The Commission has conducted a consumer education campaign throughout the state which included the distribution of over 5 million copies of the Power Guide to Electric Choice. The Commission also worked with ERCOT to resolve technical issues related to switching and billing customers in the early months. Work continues to make the system more robust and reliable. As of September 2002, 400,837 individual customer premises (6.8 percent of the total eligible) were being served by an REP other than the incumbent affiliated REP in the ERCOT service area. By the end of January 2003, that number had increased to 683,815²⁴.

In June 2003, it was reported that Austin Energy will raise its rates in three stages over the next six months because of rising natural gas prices and the shutdown of a South Texas nuclear plant. The increases will start in July 2003 with an average of 3 percent to 5 percent increase for residential customers. By January, residential customers will be paying 13 percent to 16 percent more than they are now and commercial customers will see bills that are 14 percent to 21 percent higher. It's the first time in two years that the city-owned utility has raised the fuel charge.

A June 2003 article in Energy Pulse provides some good insight into the deregulation of electricity in Texas. A recent study by the Center for the Advancement of Energy Markets gave Texas a total of 69 points on its Retail Energy Deregulation Index, higher than any other state in the U.S., and next only to New Zealand (75) and the UK (88) on the global scale²⁵. The number of customers opting for an REP rather than staying with the incumbent utility has been steadily increasing. The overall savings to customers paying for electricity has been reported to be in the millions of dollars. The author of the article suggests there are two critical aspects of the Texas ERCOT market that have aided in the success. These are excess generation capacity in the region, and comfortable head room between the overall wholesale prices and the PUC enforced "Price-to-Beat" for affiliated REPs in their prior monopoly supply zones.

On June 18, 2003, *Energy Central Daily Electric Power News* reported Entergy Corporation of Louisiana will ask the PUC to set a fixed date to launch retail competition in the electric utility's Texas service area and to approve a set of rules to create the competitive field. The PUC turned down an earlier request to begin competition on January 1, 2004, because it was not likely an open and accessible interstate transmission grid would be available for retail competitors.

²⁴Texas Electric Choice, Presentation to the House Committee on Regulated Industries by Chairman Rebecca Klein, February 23, 2003.

²⁵Hassan, Mohsin, Electricity De-Regulation in Texas: A View From the Trenches, Energy Pulse, June 11, 2003.

Sources of Information:

- 1) Public Utility Commission of Texas, <http://www.puc.state.tx.us/index.cfm>
- 2) Federal Energy Management Program, <http://pnnl-utilityrestructuring.pnl.gov/>
- 3) Edison Electric Institute, Electric Restructuring, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 4) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislative/regulatory/>
- 5) National Association of Regulatory Utility Commissioners, Electric Restructuring Update, <http://www.naruc.whatsup.net/clients/naruc/naruc.nsf/>
- 6) Energy Information Administration, Electric Restructuring Update, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 7) National Energy Affordability and Accessibility Project, Electric Restructuring, May 2003, <http://neaap.ncat.org/profiles/>
- 8) Indiana Utility Regulatory Commission, Restructuring Activities Reports, April 2003, <http://www.in.gov/iurc/issues/restruct/restruct.pdf>
- 9) Claudia Grisales and Marilyn Geewax, Natural-Gas Cost, Nuclear Plant Shutdown Drive-Up Austin, Texas, Utility Rates, Austin American-Statesman, Texas, June 11, 2003.
- 10) Mohsin Hassan, Electricity De-Regulation in Texas: A View From the Trenches, Energy Pulse, June 11, 2003.
- 11) Electric Reliability Council of Texas (ERCOT), Texas vs. California Deregulation Information, http://www.powertochoose.org/publications/tx-ca_brochure.pdf
www.ercot.com
- 12) Dan Wallach, Louisiana Utility Seeks Commission Guidelines, Schedule for Retail Competition, The Beaumont Enterprise, June 18, 2003.

VIRGINIA

2003 Restructuring Update

Current Restructuring Activities:

Since September 2000, the State Corporation Commission (SCC) has adopted several new rules regarding retail choice. In 2000, the SCC adopted rules on retail pilot programs, net energy metering, the transfer of transmission facilities to an RTO and functional separation of utilities and competitive affiliates. In March 2001, the SCC approved a plan to implement retail choice for all investor owned utility customers by January 2003. In June 2001, the SCC approved final retail access rules covering affiliate transactions, licensing, marketing, enrollment and billing. In October 2001, the SCC ruled that large customers returning to their incumbent utility's capped rates must stay with the utility for at least one year. In January 2002, the SCC set a "price to compare" which retail choice providers must beat. In January 2003, the SCC reported to the state legislature that the Federal Energy Regulatory Commission's (FERC) SMD proposal giving it authority over transmission service, could hurt electric customers.

During March 2001, SB 1420 was enacted. This bill concerned the designation of a default supplier and a mechanism for establishing default service rates. The bill designates the SCC as the deciding agent for supplier of last resort in a competitive retail market for electricity. Also contained in the bill: 1) the transfer of sale of generating assets would be subject to SCC approval, 2) competitive metering and billing, scheduled for 2002 and 2003, could be delayed, and 3) suppliers would be allowed to recover the costs of implementing competitive metering and billing through tariffs.

In November 2002, the Legislative Transition Task Force issued an order to examine utilities' stranded cost recovery mechanisms, and convene the Stranded Costs Task Force. The task force released a stranded costs summary, which includes information on how utilities currently collect stranded costs from customers. Customers fund stranded cost recovery through "a nonbypassable wires charge" until mid-2007. Two new proposals being considered would eliminate the wire charges for industrial and commercial customers and halt minimum stay periods. The current rate cap would be lifted so retail customers could pay market-based rates.

On March 20, 2003, H 2319 was amended and reenacted §§ 56-577 and 56-589 of the Code of Virginia relating to electric restructuring. A portion of the bill was amended to say the Commission may conduct pilot programs encompassing retail customer choice of electricity energy suppliers for each incumbent electric utility that has not transferred functional control of its transmission facilities to a regional transmission entity prior to January 1, 2003. Upon application of an incumbent electric utility, the Commission may establish opt-in and opt-out municipal aggregation pilots and any other pilot programs the Commission deems to be in the public interest, and the Commission shall report to the Legislative Transition Task Force on the status of such pilots by November of each year through 2006.

On April 2, 2003, H 2453 was amended and reenacted §§ 56-577 and 56-579 of the Code of Virginia relating to electric restructuring. A portion of the bill was amended to say that no incumbent electric utility could transfer to any person any ownership or control of, or any

responsibility to operate, any portion of any transmission system located in the Commonwealth prior to July 1, 2004, without approval. However, each incumbent electric utility was required to file an application for approval and transfer management and control of its transmission assets to a regional transmission entity by January 1, 2005. The Commission must report annually to the Legislative Task Force its assessment of the success in the practices and policies of the Regional Transmission Entity facilitating the orderly development of competition in the Commonwealth.

Restructuring Follow-Up Activities and Reports Issued:

As of August 30, 2002, Energy Central Professional, a news organization focusing on the energy industry, reported that, in Virginia, the right to choose has not yet evolved into the ability to choose. There are no competitive service providers offering energy priced below capped rates. As of August 2002, only 2,500 residential consumers and 24 small commercial consumers out of a possible 1.3 million customers were using an alternative supplier. Another 3 million customers will be eligible on January 1, 2003 and an additional 150,000 customers will have retail choice by January 1, 2004.

A report prepared for the Virginia General Assembly and the State Corporation Commission in August 2002, entitled 2002 Performance Review of Electric Power Markets, by The National Regulatory Research Institute, listed recommendations to facilitate effective competition in the Commonwealth. The recommendations included:

- Stimulate competition in the large commercial and industrial customer market.
- Allow shopping customers that return to their incumbent utility the option to accept market-based pricing rather than capped rates in order to avoid a minimum stay requirement.
- Eliminate or have a gradual reduction of the price caps and the elimination or gradual reduction of the wires charges. Competitive service providers claim the existence of price caps and wires charges makes it impossible for a competitive market to develop because a competitor cannot make a profit. Utilities and consumer groups say price caps and wires charges are essential components of the restructuring act and help protect the interests of both consumers and utilities.
- Send customers price signals to allow them to use energy wisely and effectively.
- Before a viable competitive electricity retail market can develop, there must be a robust wholesale market and an operational and independent regional transmission organization. Progress has been made in the state, but more time is needed before that foundation is a reality.

The report stated that its recommendations reflect the evolutionary nature of the transition to competition concerning electric restructuring.

Sources of Information:

- 1) Virginia State Corporation Commission, <http://www.state.va.us/scc/division/restruct/main/tbarroll.htm>
- 2) Virginia General Assembly, <http://legis.state.va.us/>
- 3) National Energy Affordability and Accessibility Project, Restructure Update,

- <http://neaap.ncat.org/profiles/>
- 4) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
 - 5) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
 - 6) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislativeregulatory/>
 - 7) NARUC Energy Regulatory Database, <http://www.naruc.whatsup.net/clients/naruc/naruc.nsf/>
 - 8) FEMP, Electric Utility Restructuring Status, <http://pnnl-utilityrestructuring.pnl.gov/>
 - 9) Energy Central Professional, State Deregulation Status, <http://pro.energycentral.com/membership/tour.cfm> This is a subscription site, information is listed under industry data.
 - 10) Review of FERC's Proposed Standard Market Design and Potential Risks to Electric Service in Virginia, Prepared by State Corporation Commission, January 2003, http://www.state.va.us/scc/caseinfo/reports/ltrf_addendum_02.pdf
 - 11) Rose, Kenneth, 2002 Performance Review of Electric Power Markets, The National Regulatory Research Institute, August 30, 2002, http://www.state.va.us/scc/caseinfo/reports/ltrf_addendum_02.pdf
 - 12) Indiana Utility Regulatory Commission, States Electric Choice Programs, <http://www.in.gov/iurc/issues/restruct/restruct.pdf>

WEST VIRGINIA 2003 Restructuring Update

Current Restructuring Activities:

West Virginia is not currently actively pursuing electric restructuring. The state has enacted legislation establishing a timetable for implementing some form of investor owned utility restructuring, but the transition period has yet to begin. The original start date of January 1, 2001, has been put on hold. There has been no action on electric deregulation during the 2001, 2002 or 2003 legislative sessions.

Restructuring Follow-Up Activities and Reports Issued:

A few years ago, electric restructuring was a hot topic in West Virginia, but low cost of electricity in West Virginia, energy shortages in California, a bad economy and terrorists attacks have put deregulation on the back burner indefinitely. In addition, a change in administration has slowed down the process because the new administration wants to continue to look at deregulation plans.

In January 2003, the Public Service Commission of West Virginia issued a Management Summary Report to the Joint Committee on Government and Finance of the West Virginia Legislature. The report said electric deregulation continues to be on hold, but movement to competitive wholesale markets continues to be a major focus at the federal level. Throughout 2002, the PSC staff continued to monitor and participate in major proceedings initiated by FERC, regarding competitive wholesale markets.

Sources of Information:

- 1) Public Service Commission of West Virginia,
<http://www.psc.state.wv.us/electrest/default.htm>
http://www.psc.state.wv.us/MgmtSum_200301.pdf
- 2) National Energy Affordability and Accessibility Project, Restructure Update,
<http://neaap.ncat.org/profiles/>
- 3) Energy Information Administration, Electric Restructuring,
http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 4) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002,
http://www.eei.org/issues/comp_reg/state_comp.pdf
- 5) American Public Power Association, Electric Restructuring Update,
<http://www.appanet.org/legislative/regulatory/>
- 6) NARUC Energy Regulatory Database,
<http://www.naruc.whatsup.net/clients/naruc/naruc.nsf/>
- 7) FEMP, Electric Utility Restructuring Status, <http://pnnl-utilityrestructuring.pnl.gov/>

STATES THAT HAVE NOT
IMPLEMENTED
RESTRUCTURING

ALABAMA 2003 Restructuring Update

In October 2000, the Alabama Public Service Commission issued an Electricity Restructuring Report. The report stated that restructuring is not in the public interest at this time. As of the date of the report, PSC staff did not believe that it had been demonstrated that all consumers in Alabama would continue to receive adequate, safe, reliable and efficient energy services at fair and reasonable prices under a restructured retail market. The finding did not mean that Alabama should not restructure, but that the time was not right. The report suggested that any previous or regional economic studies should be re-evaluated using current known and projected inputs. The Commission stated that a cautious and deliberate approach to competition was the appropriate path to follow because “implementation can be extremely costly and initially unworkable.” The report cited the fact that Alabama is a relatively low cost state as another reason that the issue of restructuring should be dealt with slowly. According to the report, waiting for solutions to market power, transmission problems and proper program design was prudent. Alabama will continue to study and evaluate restructuring efforts in other states.

Sources of Information:

- 1) Alabama Public Service Commission October 2000 Electricity Restructuring Report, <http://www.psc.state.al.us/Electric%20Restruct/26427rpt.pdf>
- 2) EIA Status of Alabama Electric Industry Restructuring Activity as of February 2003, http://www.eia.doe.gov/cneaf/electricity/chg_str/alabama.html

ALASKA 2003 Restructuring Update

As of June 2003, Alaska has not implemented restructuring. On September 28, 2001, the Regulatory Commission of Alaska (RCA) issued an order to defer any further consideration of retail electric utility restructuring and competition in Alaska, asserting that projections of any potential benefits were too speculative at the time. The order stated that there was insufficient evidence in the record showing that retail electric competition was in the public interest for any area of Alaska, that there was no compelling evidence that rates could be lowered, that retail competition would require extensive investment to create a well-functioning power market, and that the transition to competition from the present regulated environment would expose ratepayers to significant risk.

The order was issued after considering an electric restructuring study jointly sponsored by the RCA and the Legislature. RCA staff issued a report about the study, in which they recommended that no policy action be taken at the time to restructure Alaska's Railbelt utility system. Staff stated that Alaska had little to gain, and potentially much to lose, by any quick movement to retail competition.

Sources of Information:

- 1) September 28, 2001, Regulatory Commission of Alaska Order,
http://www.state.ak.us/rca/orders/2001/r97010_8.pdf
- 2) EIA Status of Alaska Electric Industry Restructuring as of February 2003,
http://www.eia.doe.gov/cneaf/electricity/chg_str/alaska.html

COLORADO 2003 Restructuring Update

As of June 2003, Colorado has not implemented restructuring. The Colorado Electricity Advisory Panel (Panel), in November 1999, issued a report on electric utility restructuring in Colorado after a fifteen-month study ordered by the Legislature in 1998. According to the executive summary of The Evaluation Study Report, and a Colorado Public Utilities Commission (PUC) news release, the 29-member panel voted 17-12 that restructuring was not in the best interest of the state and its electric consumers. The vote did not constitute a two-thirds majority that the Legislature required as a formal recommendation of the Panel. The statement by the panel majority stated that electric rates at the time of the report were relatively low and that an energy consultant for the Panel found that under every tested scenario, rates were likely to go up - as much as 29 percent more than under the existing system of a 20 year period - if retail restructuring were implemented²⁶. The majority also stated that restructuring could hurt Colorado's economy; cause a loss of jobs; severely impact governmental taxes, fees and revenues; and expose consumers to many cost, reliability, and service risks. Also of concern to the majority was that a competitive wholesale market needed to develop in the region and that a single utility in Colorado had substantial market power that it could use to unilaterally raise rates under retail restructuring.

The Panel's report also addressed the manner in which restructuring should be implemented, if the General Assembly decided to go forth with implementation of electric industry restructuring. The recommendations included approval of a strong set of consumer protection requirements, "opt-in" rights for cooperative and municipally owned utilities, licensing requirements for new suppliers, and a systems benefits charge to be implemented during some transition period. Since the report was issued, there has not been any significant activity by the PUC, the Panel, or the Legislature regarding restructuring.

Sources of Information:

- 1) Colorado Public Utilities News Release, dated November 1, 1999,
<http://www.dora.state.co.us/puc/projects/EUIR/11-01-99newsEUIRrpt.pdf>
- 2) Colorado Electricity Advisory Panel Evaluation Study Report, Executive Summary,
<http://www.dora.state.co.us/puc/projects/EUIR/FinalRpt/FinalRpt10-25.pdf>
- 3) EIA Status of Colorado Electric Industry Restructuring Activity as of February 2003,
http://www.eia.doe.gov/cneaf/electricity/chg_str/colorado.html

²⁶Colorado Electricity Advisory Panel Evaluation Study Report, Executive Summary,
<http://www.dora.state.co.us/puc/projects/EUIR/FinalRpt/FinalRpt10-25.pdf>

FLORIDA 2003 Restructuring Update

As of June 2003, Florida has not restructured its electric industry. The Florida Energy 2020 Study Commission submitted its final report in December 2001 to the Governor and the Legislature. The report encouraged the creation of a competitive wholesale market and the transfer of utility transmission assets to a regional transmission organization (RTO). The report stated that, “the Study Commission does not believe it is in the best interests of the citizens of Florida to attempt to bring about retail choice at this time. The prevailing logic, with which the Study Commission agrees, is that retail competition should not be attempted until competition in the wholesale market is established.” The report stated that another study commission should be established in 2004 to assess the status of wholesale competition and make recommendations as to whether retail competition should be allowed. No legislation has been introduced in recent years to deregulate the retail electric market.

Sources of Information:

- 1) The Final Report of the Florida Energy 2020 Study Commission,
http://www.myflorida.com/myflorida/government/taskandcommissions/energy_commission/pdfs/final_report.pdf
- 2) EIA Status of Florida Electric Industry Restructuring Activity as of February 2003,
http://www.eia.doe.gov/cneaf/electricity/chg_str/florida.html

GEORGIA 2003 Restructuring Update

As of June 2003, Georgia has not restructured its electric industry. The Georgia Public Service Commission (PSC) in January 1998 issued its Staff Report on Electric Industry Restructuring. The report stated that Georgia's electric customers enjoyed retail rates at or below the national average, so there was not the same urgency to restructure as in some other states and therefore, clear evidence of benefits to the citizens of the state should be shown prior to restructuring. The report stated that Georgia's electric industry already had several characteristics that benefit customers: economies of centralized dispatch were already being realized with the Southern Company Control Area; Georgia has had retail competition for new loads of at least 900kW since the Georgia territorial Act of 1973; and open access for wholesale power existed with the Integrated Transmission System. No legislation has passed to implement full retail choice in the state. The PSC will continue to study the issue and, according to their Web site, they will recommend legislation to the Georgia General Assembly if true benefits are demonstrated²⁷.

Sources of Information:

- 1) Georgia Public Service Commission January 1998 Staff Report on Electric Industry Restructuring, <http://www.psc.state.ga.us/electricindust/>
- 2) EIA Status of Georgia Electric Industry Restructuring Activity as of February 2003, http://www.eia.doe.gov/cneaf/electricity/chg_str/georgia.html

²⁷Georgia Public Service Commission Web site, Electric Deregulation page, <http://www.psc.state.ga.us/electric/>

HAWAII 2003 Restructuring Update

The Hawaii Public Utilities Commission (PUC) opened Docket No. 96-0493 in December 1996, to examine the issues related to the introduction of competition in the electric power industry. The PUC submitted a status report regarding the docket to the Legislature in December 1999. The status report explained that the diverse interests and views of the 19 docket parties and participants prevented them from reaching a consensus on the issues raised during the proceeding. The report stated that the PUC would continue to examine the issue of competition. To date, restructuring has not been implemented. The docket and the issue of restructuring have not had any recent activity.

Sources of Information:

- 1) PUC Report on Docket No. 96-0493,
<http://www.hawaii.gov/dbedt/ert/dereg-report1999.pdf>
- 2) Department of Business, Economic Development & Tourism, Electric Sector Deregulation Web page, <http://www.hawaii.gov/dbedt/ert/deregulation.html>
- 3) EIA Status of Hawaii Electric Industry Restructuring Activity as of February 2003,
http://www.eia.doe.gov/cneaf/electricity/chg_str/hawaii.html

IDAHO 2003 Restructuring Update

The Idaho Legislative Council Committee on Electric Utilities Restructuring submitted a final report in January 1999. The report recommended that no legislative actions be taken at the time that would encourage retail electric power restructuring. The committee was reauthorized in following sessions, but no significant legislative action to implement restructuring has been introduced as of June 2003. The Idaho Public Utilities Commission conducted an investigation in 1996 into changes occurring in the electric industry and issued an order with their findings on August 16, 1996. The order stated that Idaho should be cautious with respect to an outright deregulation of Idaho's electric markets. At the time of the report, Idaho electric utilities customers paid some of the lowest electric rates in the nation and the PUC found that the majority of ratepayers may experience an increase in rates over the long term as a result of restructuring. The PUC stated in the report that it was also concerned that quality of service would decline with deregulation and that large customers would benefit at the expense of smaller residential customers. The Commission concluded that deregulation of Idaho's electric utilities, without some form of Commission oversight, was not in the best interests of the general body of Idaho's electric utility ratepayers.

Sources of Information:

- 1) IPUC Order No. 26555, <http://www.puc.state.id.us/on26555.pdf>
- 2) January 1999 Legislative Council on Electric Utilities Restructuring Final Report, <http://www.chguernsey-econ.com/docs/IdahoFinal.html>
- 3) EIA Status of Idaho Electric Industry Restructuring Activity as of February 2003, http://www.eia.doe.gov/cneaf/electricity/chg_str/idaho.html

INDIANA 2003 Restructuring Update

According to the Indiana Utility Regulatory Commission (IURC), restructuring of the electric industry in Indiana would require legislative action by the Indiana General Assembly. There has been proposed legislation, in the past, that never made it out of committee. As of June 2003, the issue has not been considered in any form for at least two years and it is unlikely it will be considered in the next legislative session. The IURC's October 2002 Energy Report to the Indiana General Assembly states that in the past year, most of Indiana's utilities have transferred operational control of their transmission to the Midwest ISO.

Sources of Information:

- 1) IURC October 2002 Energy Report to the Indiana General Assembly,
http://www.state.in.us/iurc/issues/regflex/ef_energy_02.pdf
- 2) Laura Cvengros, IURC, Assistant Director - Electricity, (317) 233-5315,
lcvengros@urc.state.in.us
- 3) EIA Status of Indiana Electric Industry Restructuring Activity as of February 2003,
http://www.eia.doe.gov/cneaf/electricity/chg_str/indiana.html

IOWA 2003 Restructuring Update

Restructuring legislation was introduced in 2000 for consideration by the Iowa General Assembly, but it did not pass either chamber. Since the 2000 session, no significant electric restructuring legislation has been considered by the General Assembly. The Iowa Utilities Board (IUB) issued an order on April 17, 2001, closing its *Inquiry Into Emerging Competition In The Electric Industry* docket. The purpose of the inquiry was to debate and attempt to answer public policy and other questions surrounding emerging electric competition. The inquiry resulted in several reports, but the order stated that consensus was not reached on several issues. According to the order, the docket was closed because no legislation to restructure Iowa's retail electric markets was currently pending, and therefore, the inquiry had served its purpose. A group established by the Legislative Council in 1998, the Deregulation and Restructuring of the Electric Utility Industry Study Committee, was charged with developing recommendations regarding deregulation and restructuring of the industry. The committee issued its final report in June 1999 but made no formal recommendations at the conclusion of its study.

Sources of Information:

- 1) Docket No. NOI-95-1, In Re: Inquiry Into Emerging Competition In The Electric Industry,
http://www.state.ia.us/government/com/util/_private/Orders/2001/0417_noi951.pdf
- 2) Final Report of the Deregulation and Restructuring of the Electric Utility Industry Study Committee,
<http://www.legis.state.ia.us/GA/77GA/Interim/1998/comminfo/dereg/final.htm>
- 3) EIA Status of Iowa Electric Industry Restructuring Activity as of February 2003,
http://www.eia.doe.gov/cneaf/electricity/chg_str/iowa.html

KANSAS

2003 Restructuring Update

Although several bills were introduced during the 1999 legislative session to restructure the industry, no electric restructuring measures were acted upon when the session adjourned May 2, 1999. Even though no action was taken, the issue was later revisited in 2001. SB 243 was enacted in January 2001, which exempted all but nuclear plants from the state's Siting Facility Act. The Governor signed HB 2245 in May 2001, allowing small renewable systems to be connected to the utility grid, and HB 2266, which permitted utilities to build merchant power plants to be excluded from the jurisdiction of the Kansas Corporation Commission. Kansas is still contemplating which path to follow regarding the deregulation of the state's electrical utilities.

A 1997 study conducted by the Docking Institute of Public Affairs and commissioned by Kansas electric cooperatives concluded that retail choice in Kansas would devastate rural customers. The impacts predicted would be an increase in rates up to twice what people currently pay, a loss of hundreds of jobs in each of the four service territories studied, and the loss of millions in tax revenue.

The Southwest Power Pool (SPP), of which Kansas utilities are members, is considering whether to form an Independent System Operator (ISO) that would be approved by the Federal Energy Reserve Commission (FERC).

Sources of Information:

- 1) FEMP, Electric Utility Restructuring Status,
<http://pnnl-utilityrestructuring.pnl.gov/Electric/ioustates/kansas.htm>
- 2) Interstate Renewable Energy Council, June 2001 Newsletter,
http://www.irecusa.org/articles/static/1/997988480_987096476.html
- 3) 1997 Docking Institute of Public Affairs Report,
<http://www.sunflower.net/pub/docking.pdf>

KENTUCKY 2003 Restructuring Update

The Kentucky Electricity Restructuring Task Force (KERTF) concluded in its 1999 report that the average rate level in Kentucky would be very similar under either a regulated or choice environment. The KERTF predicted that customers would see higher prices in periods of tight capacity. The Task Force recommended that the General Assembly continue to study the issue of retail competition. The Task Force also recommended that the General Assembly monitor actions taken in other states that have opened their retail market to competition and address other issues, such as reliability of service, transmission and consumer education.

In June 2001, the KERTF recommended that law-makers wait until the 2002 legislative session to consider opening the state's electric industry to competition. The KERTF was to submit a final report to the Legislative Research Commission by November 2001, but no report was issued and no more recommendations have been made since then. As of June 2003 the Task Force has been reauthorized to study the issue of retail competition.

Source of Information:

- 1) FEMP, Electric Utility Restructuring Status,
<http://pnnl-utilityrestructuring.pnl.gov/Electric/ioustates/kentucky.htm>

LOUISIANA 2003 Restructuring Update

The Louisiana Public Service Commission (LPSC) ordered staff to continue to investigate deregulation and develop a retail choice pilot program by January 1, 2001. The LPSC was on schedule in developing a plan, that would allow electric consumers to shop for competitive rates. According to this plan, companies that use five megawatts or more of energy would have the option of leaving the regulated market every two years starting in 2003. The proposed plan did not include retail competition for residential or small business consumers. The Commission had the authority to implement this plan at any time following its development and does not need legislative action. Like other states Louisiana lost interest in restructuring; believing it not to be in the best interest of the public. According to the LPSC all plans to restructure have been suspended until further notice.

Source of Information:

- 1) Strategic Energy, Louisiana Restructuring Update,
<http://www.sel.com/Supply/Electricity/states/Louisiana/louisreg.htm>

MINNESOTA 2003 Restructuring Update

The Minnesota Department of Commerce (DOC) issued a report, on September 6, 2000, which recommended changes in Minnesota's electric industry, but did not recommend full deregulation. The DOC report supported comprehensive energy planning, greater efficiencies in energy conservation, promoting modern energy technologies, and encouraging and enforcing wholesale competition. In the report, the DOC stated that it remained committed to exploring the benefits of retail competition for Minnesota consumers, but that it could not support authorizing retail competition in Minnesota at the time, given the concerns that retail competition was causing in the states that were experimenting with it, and given the looming reliability dilemma facing the Midwest region. Minnesota has not attempted to enforce any plans for restructuring. Like many other states, Minnesota is watching other states to keep track of their restructuring efforts.

Source of Information:

- 1) FEMP, Status of Restructuring in Massachusetts,
<http://pnnl-utilityrestructuring.pnl.gov/Electric/ioustates/minnesota.htm>

MISSISSIPPI 2003 Restructuring Update

The Deputy Administrator of the Mississippi Public Service Commission (MPSC), stated that an order was issued by the Commission in May 2000 advising that restructuring was not in the best interest of the state at the time. The MPSC will continue to monitor the restructuring efforts of other states, but at this time restructuring is not likely to occur in the near future.

Source of Information:

- 1) Bob Marsh, Deputy Administrator, (601)961-5488, bob.marsh@psc.state.ms.us

MISSOURI

2003 Restructuring Update

The Missouri Public Service Commission (MPSC) approved the reorganization of Kansas City Power & Light (KCPL) in September 2001. Conditions of the reorganization are designed to protect KCPL customers in the event of electrical restructuring in the future. KCPL formed a holding company, Great Plains Energy, Inc., with three subsidiaries: KCPL, which engages in the generation, transmission, distribution and sale of electricity to approximately 467,000 customers located in western Missouri and eastern Kansas; Great Plains Power, Inc, which develops competitive generation for the wholesale market; and KLT, an unregulated subsidiary with investments in energy-related businesses. Purchase supply agreements between KCPL and Great Plains Power, or its affiliates, will require MPSC approval and must be cost-based. Despite approving these changes the MPSC has halted all restructuring activities. The Commission believes restructuring is not in the best interest of the public at this time and continues to monitor other states' restructuring efforts.

Source of Information:

- 1) EIA, Status of Restructuring in Missouri,
http://www.eia.doe.gov/cneaf/electricity/chg_str/missouri.html

NEBRASKA 2003 Restructuring Update

The Natural Resource Committee submitted Legislative Bill 901 (LB 901) during the 2000 legislative session. LB 901 identified the conditions that must be met prior to changing the public power system. The Legislature passed the bill on April 11, 2000, and the Governor signed it on April 13, 2000. In October 2002, the Nebraska Power Review Board submitted its Condition Final Report. This report is an annual requirement of LB 901, and analyzes five conditions concerning the electric system in Nebraska and the region to help determine when competition should be initiated in Nebraska. These conditions are:

- Whether or not a viable regional transmission organization and adequate transmission should exist in Nebraska or in a region that includes Nebraska.
- Whether or not a viable wholesale electricity market exists in a region which includes Nebraska.
- The extent to which retail rates have been unbundled in Nebraska.
- A comparison of Nebraska's wholesale electricity prices to the prices in the region.
- Any other information the Board believed to be beneficial to the Governor, the Legislature, and Nebraska citizens, when considering whether retail electric competition is beneficial, such as, but not limited to, an update on deregulation activities and an update on federal deregulation activities.

Currently the Legislature has ceased all restructuring efforts because none of the stated conditions have been met. Nebraska is continuing to monitor the restructuring efforts of other states.

Sources of Information:

- 1) FEMP (Federal Energy Management Program) Web site, Update of Restructuring in Nebraska, <http://pnnl-utilityrestructuring.pnl.gov/gas/ioustates/nebraska.htm>
- 2) Tim Texel, Nebraska Power Review Board, Executive Director and General Counsel, (402)471-2301, tjtexel@linux3.nrc.state.ne.us

NORTH CAROLINA 2003 Restructuring Update

In May 2000, the Legislative Study Commission recommended that consumers be allowed to choose their electricity providers by 2006 and that rates to be capped until December 31, 2006. However, the Legislative Study Commission, considering the feasibility of electric utility competition in North Carolina, decided against recommending new laws for electric deregulation just one day before the start of the 2001 legislative session. The Commission did not propose any legislation for the 2001 session and decided to place its restructuring deliberations on hold until 2002. The commission continued its study focusing on wholesale markets, consumer protection and renewables.

When the Legislature met in March 2002 to discuss the status of deregulation, the Study Commission decided that, due to the California energy crisis and the repercussions of Enron's collapse, it would recommend that the Legislature delay the start of deregulation beyond 2006. North Carolina has been very cautious in taking steps towards restructuring. The goal to have consumer choice established by the end of 2006 has been postponed.

Sources of Information:

- 1) NARUC Energy Regulatory Database,
<http://www.naruc.whatsup.net/clients/naruc/naruc.nsf/wwwStateSummaries/North+Carolina>
- 2) National Energy Affordability and Accessibility Project, Restructure Update,
<http://neaap.ncat.org/restructuring/nc-re.htm>

NORTH DAKOTA 2003 Restructuring Update

Since the Legislature passed HB 1237 to study electric restructuring, no effort has been made by either the Governor's Office or the Legislature to submit additional proposals or legislation concerning electric restructuring. The study which began under HB 1237 is scheduled to be completed by August 1, 2003.

Source of Information:

- 1) FEMP, Electric Utility Restructuring Status,
<http://pnnl-utilityrestructuring.pnl.gov/Electric/ioustates/northdakota.htm#status>

SOUTH CAROLINA 2003 Restructuring Update

Neither the South Carolina Public Service Commission nor the South Carolina Legislature have formally addressed the issue of electric deregulation since September 2000. The 2000 session of the legislature studied restructuring, but took no action. The legislature did not seriously consider restructuring legislation in the 2001 session and no action occurred in 2002.

The Public Service Commission has been monitoring California's electric restructuring problems and has received public comment from citizens announcing their opposition to electric restructuring.

Sources of Information:

- 1) Public Service Commission of South Carolina,
<http://www.psc.state.sc.us/utilities/default.htm>
- 2) Energy Information Administration, Electric Restructuring,
http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 3) Electric Cooperatives of South Carolina, Inc., <http://www.ecsc.org/deregulation.htm>
- 4) Edison Electric Institute, Electric Competition in the States, A Summary, April, 2002,
http://www.eei.org/issues/comp_reg/state_comp.pdf
- 5) American Public Power Association, Electric Restructuring Update,
<http://www.appanet.org/legislative/regulatory/>

SOUTH DAKOTA 2003 Restructuring Update

Neither the South Dakota Public Service Commission nor the South Dakota Legislature have formally addressed the issue of electric deregulation since September 2000. No electric industry restructuring legislation was introduced in the 2001 or 2002 legislative sessions.

The Public Service Commission has said there is little impetus for electric industry restructuring in the state due to low rates and that cooperatives may see their rates rise.

Sources of Information:

- 1) South Dakota Public Utilities Commission, <http://www.state.sd.us/>
- 2) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 3) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 4) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislativeregulatory/>

TENNESSEE

2003 Restructuring Update

In 2001, the Governor placed a moratorium on applications for siting new merchant generation facilities in the state until new guidelines for their development can be promulgated. The Legislature did not consider any type of restructuring legislation in 2002. Tennessee is predominantly served by the Tennessee Valley Authority (TVA), a federal utility that is exempt from state regulation. TVA provides power with an integrated generation and transmission system to 98 percent of customers in the state.

Sources of Information:

- 1) Tennessee Regulatory Authority, <http://www.state.tn.us/tra/reports/electric.pdf>
- 2) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 3) Tennessee Comptroller, Office of Research, February 2000, <http://www.comptroller.state.tn.us/orea/reports/electric.pdf>
- 4) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 5) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislative/regulatory/>

UTAH 2003 Restructuring Update

In 2000, S.B. 250 extended the Electric Deregulation and Customer Choice Task Force until November 30, 2002. No customer choice legislation was proposed by the task force.

In the 2001 General Session, H.B. 244, “Modifying the Electric Deregulation and Customer Choice Task Force,” changed the name and focus of the Electric Deregulation and Customer Task Force, which was created in 1997. This two year Energy Policy Task Force was charged with studying (1) the energy needs of the state, (2) federal and other states’ efforts to address energy needs, (3) potential Utah, federal, and other states’ conservation or demand-side management activities, and (4) potential ways the state could develop, facilitate, or promote the generation, exploration, or transportation of new energy to serve the needs of the state. The task force was also charged with recommending legislation to ensure that the energy needs of the state are met.

In 2002, the Energy Policy Task Force considered the following study items: (1) generation resource acquisition and development, (2) electric reliability and customer service, (3) multi-state utility regulation, (4) regional transmission organizations (RTOs), (5) the regulatory activities of the Public Service Commission, (6) Utah’s energy resources and needs, and (7) the future of the Energy Policy Task Force. The task force considered these issues at its August and November 2002 meetings and recommended that legislation be drafted to reauthorize the Energy Policy Task Force for an additional 2 years. To date, the task force has not proposed legislation or issued any opinions about electric restructuring.

Sources of Information:

- 1) Public Service Commission of Utah, <http://www.commerce.utah.gov/dpu/index.html>
- 2) Utah Department of Commerce, <http://www.commerce.utah.gov/dpu/electric.html>
- 3) Indiana Utility Regulatory Commission, States Electric Choice Programs, <http://www.in.gov/iurc/issues/restruct/restruct.pdf>
- 4) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 5) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 6) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislative/regulatory/>

VERMONT 2003 Restructuring Update

In November 1999, Central Vermont Public Service and Green Mountain Power petitioned the Vermont Public Service Board (PSB) to develop retail access policies to implement customer choice by September 1, 2001. In response, the PSB in January 2000 opened Docket 6330 to develop a consensus on restructuring issues. In December 2001, the PSB closed the docket stating that wholesale power markets were unlikely to be appropriate for retail competition for at least a few years.

An identified major obstacle to restructuring is the very high level of stranded costs from must-take power contracts. Several of the largest utilities tried to negotiate stranded cost mitigation with power suppliers and they also proposed recovering the remaining stranded costs through regulatory action. However, in 2001, Central Vermont Public Service and Green Mountain Power announced it was no longer pursuing current plans to change their structures.

Although Vermont has not passed restructuring legislation, it did adopt legislation giving the state's Public Service Board the authority to establish a system benefits charge to fund energy efficiency programs through Efficiency Vermont, a non-utility entity. Efficiency Vermont is charged with administering and delivering seven statewide energy efficiency programs for all customer classes (residential, including low-income multifamily and single family; commercial, industrial and dairy agricultural). Annual funding is about \$17.5 million, with about 16 percent for low-income programs.

Sources of Information:

- 1) Vermont Public Service Board, <http://www.state.vt.us/psd/restr.htm>
- 2) National Energy Affordability and Accessibility Project, Restructure Update, <http://neaap.ncat.org/profiles/>
- 3) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 4) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 5) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislativeregulatory/>
- 6) FEMP, Electric Utility Restructuring Status, <http://pnnl-utilityrestructuring.pnl.gov/>
- 7) Energy Central Professional, State Deregulation Status, <http://pro.energycentral.com/membership/tour.cfm> This is a subscription site, information is listed under industry data.

WASHINGTON

2003 Restructuring Update

In 1993 the state of Washington developed a State Energy Strategy (SES) and required by state law the Energy Policy Division of the Department of Community, Trade, and Economic Development (CTED) to deliver an energy report to the Governor and Legislature every two years. The first report prepared in 1995 and subsequent reports mainly focused on the implementation of state energy strategy and other key energy issues.

The 2003 report was prepared with an intention to update the electricity portions of the 1993 State Energy Crisis. The reason for the update was due to the recent changes and events in the electric industry. The state used a phrase the “perfect electrical storm” to describe in particular events that occurred in 2000 and 2001 that brought change and uncertainty to new high levels in the Northwest. According to the report, wholesale electric prices were driven to unprecedented levels due to several events which included the problems in California, fears of supply disruptions, drought causing a 30 percent fall in hydroelectric output (74 percent of electric power produced in Washington is hydroelectric), company market manipulation by firms like Enron, and skyrocketing natural gas prices. Retail prices eventually rose too. In 2002, wholesale and natural gas prices began to fall, but debt incurred to pay off the high wholesale prices would be reflected in utility rates for several years.

During the 2002 legislative season, a bill was introduced requiring the CTED to update the State Energy Strategy by December 31, 2002. The bill did not pass but the CTED did reach an agreement with the House and Senate Energy Committee Chairs and the Governor’s Office to do so. CTED formed an SES advisory committee consisting of 19 individuals representing the Legislature, electric utilities, businesses, labor, environmental organizations, low-income advocacy groups, and state agencies. The committee held five meetings in the summer and fall of 2002 and received briefings and held discussions on the general electricity situation, financial markets and electricity, natural gas issues related to electricity generation and supply, environmental impacts of electricity, energy efficiency and renewable generation, regional and national electricity issues (RTO, SMD, hydropower), and impacts of high electricity prices on low-income, business, industry and utility sectors.

Washington at the moment is not actively pursuing restructuring. However, regulated utilities in that state are each making major changes to adopt different strategies to operate in the energy marketplace. Further structural changes can be anticipated with competitive generation and the creation of some form of regional transmission organization.

On the customer side, large customers have been able to negotiate special contracts that help them benefit from low market prices and market risk when prices rise. Pilot electric choice projects have been tested. Regulatory rules are being modified to accommodate marketplace changes. Rather than guessing at the future market structure, companies, customers and regulators are matching their responses to actual market developments.

Sources of Information:

- 1) Washington Utilities and Transportation Commission, <http://wutc.wa.gov/>
- 2) Washington State Department of Community, Trade and Economic Development, Energy Policy Division, 2003 Biennial Energy Report, <http://www.energy.cted.wa.gov/Energy%20Strategy/Default.htm>
- 3) National Energy Affordability and Accessibility Project, <http://neaap.ncat.org/profiles/>
- 4) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 5) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 6) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislativeregulatory/>

WISCONSIN 2003 Restructuring Update

The retail electricity market is not deregulated in Wisconsin and retail electricity prices continue to be regulated by the PSC. The state did implement a public benefits charge to fund energy assistance and weatherization programs in October 1999.

The state has completed studies investigating restructuring investor-owned utilities and has decided not to pursue further action at this time. The focus of regulators and the courts has been on ensuring reliability in the generation, electric transmission and distribution system due to limited in-state generation and interstate transmission. Market power is a concern in Upper Wisconsin.

Sources of Information:

- 1) Public Service Commission of Wisconsin, <http://psc.wi.gov/index.htm>
- 2) Indiana Utility Regulatory Commission, States Electric Choice Programs, <http://www.in.gov/iurc/issues/restruct/restruct.pdf>
- 3) National Energy Affordability and Accessibility Project, Restructure Update, <http://neaap.ncat.org/profiles/>
- 4) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 5) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 6) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislative/regulatory/>
- 7) NARUC Energy Regulatory Database, <http://www.naruc.whatsup.net/clients/naruc/naruc.nsf/>
- 8) FEMP, Electric Utility Restructuring Status, <http://pnnl-utilityrestructuring.pnl.gov/>
- 9) Energy Central Professional, State Deregulation Status, <http://pro.energycentral.com/membership/tour.cfm> This is a subscription site, information is listed under industry data.
- 10) Report to the Legislature on Horizontal Market Power in Wisconsin Electricity Markets, Public Service Commission, December 2000, <http://psc.wi.gov/electric/cases/mrkstudy/document/reptoleg.pdf>

WYOMING 2003 Restructuring Update

The retail electricity market has not yet been deregulated in Wyoming. In November 1996, the Public Service Commission (PSC) issued a white paper on restructuring which included the comments of six subcommittees covering legal issues, social issues, implementation, transition cost, reliability, integrity and safety, and rate unbundling. The white paper recommended a study on economic impacts of restructuring. In September 1997, the study, conducted by Black and Veatch, was released and predicted only small benefits from retail choice. Two other issues, stranded costs and pilot programs, were scheduled for discussion at a June 1998 PSC hearing, but the hearing was cancelled due to concerns expressed by Legislators.

In 2000, the Legislature briefly considered restructuring-related issues, but no legislation addressing these issues was passed. In its 2002 Annual Report, the PSC did not include any discussion on electric restructuring matters.

Sources of Information:

- 1) Wyoming Public Service Commission, <http://psc.state.wy.us/>
- 2) Indiana Utility Regulatory Commission, States Electric Choice Programs, <http://www.in.gov/iurc/issues/restruct/restruct.pdf>
- 3) National Energy Affordability and Accessibility Project, Restructure Update, <http://neaap.ncat.org/profiles/>
- 4) Energy Information Administration, Electric Restructuring, http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html
- 5) Edison Electric Institute, Electric Competition in the States, A Summary, April 2002, http://www.eei.org/issues/comp_reg/state_comp.pdf
- 6) American Public Power Association, Electric Restructuring Update, <http://www.appanet.org/legislative/regulatory/>
- 7) NARUC Energy Regulatory Database, <http://www.naruc.whatsup.net/clients/naruc/naruc.nsf/>
- 8) FEMP, Electric Utility Restructuring Status, <http://pnnl-utilityrestructuring.pnl.gov/>
- 9) Energy Central Professional, State Deregulation Status, <http://pro.energycentral.com/membership/tour.cfm>. This is a subscription site, information is listed under industry data.