



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Before the  
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, CHARLESTON

**In the matter of a Proposed Rulemaking  
Related to Restructuring the Electric Utility  
Industry in West Virginia**

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**Comment of the Staff of the  
Bureaus of Economics and Consumer Protection  
of the Federal Trade Commission(1) (2)**

**General Order No. 255**

**May 19, 2000**

**I. Introduction and Summary**

The staff of the Bureaus of Economics and Consumer Protection of the Federal Trade Commission (FTC) submits this comment in the above-captioned proceeding concerning restructuring the electric utility industry in West Virginia. With this proceeding and associated recent legislation, West Virginia is joining a growing list of states that are establishing regulatory reforms to bring the benefits of increased competition (lower prices, improved service, and innovation) in the electric power industry to their citizens and businesses.

The FTC is an independent administrative agency respo

also provides suggestions the PSC may wish to consider as it implements interconnection standards for distributed energy resources and emergency service provider requirements.

## **II. The PSC May Wish to Examine Whether Competition Is Workable Prior to Opening the Retail Electricity Market to Competition**

Section 22 of the Plan provides the PSC with the authority to determine whether there is "workable competition" in the provision of retail electric service prior to lifting price caps on the cost of power supply.<sup>(4)</sup> The FTC recently noted the importance of addressing existing market power to ensure that the benefits of competition flow to consumers (*i.e.*, "workable competition") when it provided its views to Chairman Thomas E. Bliley, United States House of Representatives, Committee on Commerce, on the Electricity Competition and Reliability Act, H.R. 2944. The Commission recognized:

[T]raditional antitrust analysis recognizes that the benefits of competition are most likely to accrue to consumers when markets operate unburdened by substantial and durable market power. Accordingly, economically practicable policies that lessen existing market power in electric power markets by broadening product markets, expanding geographic markets, and lowering entry barriers are likely to enhance consumer welfare. This is particularly true where high

One approach to this problem is to standardize some of the information that suppliers disclose to consumers -- similar to what has been done with nutrition labeling on food, care labels on clothing, or energy efficiency labels on appliances. In fact, consumers in an electricity competition pilot project in New Hampshire noted the difficulty of comparing competing products when suppliers were allowed to present whatever information they chose about the product in any format they chose.(8) Standardized product labeling can alleviate this common consumer complaint by ensuring that consumers receive the relevant information they need to make an informed choice.

Various regulatory groups have recommended developing appropriate uniform disclosure requirements as a means to facilitate customer choice, provide consumer protections, and enhance market efficiency.(9) Laws or regulations calling for some degree of mandatory uniform disclosures have been enacted in a number of states, including California, Connecticut, Illinois, Maine, Massachusetts, Michigan, Nevada, New Hampshire, Pennsylvania, and Vermont.(10) Other states are considering disclosure requirements as well. In addition, various bills introduced in the United States Congress propose federal disclosure requirements, including the bill supported by the Department of Energy.(11) Indeed, the FTC has noted that mandatory disclosures are "likely to help ensure that consumers receive, prior to purchase, accurate information important to their purchasing decisions," and that disclosures should be uniform to "reduce costs to market participants by enabling them to use one disclosure throughout the country."(12) Although existing laws and FTC rules prohibiting unfair or deceptive claims would govern electricity advertising, uniform disclosures would provide an important additional consumer benefit in a new market where consumers have had no prior experience with choice.

Uniform disclosure, however, raises many issues, including determining which types of information are important to consumers in choosing a supplier. Information that may be suitable for uniform disclosure includes price, price variability, environmental attributes of power supply (generation source and emissions characteristics),(13) and contract terms (minimum length, termination fees, transfer charges, etc.).

Another issue when mandating uniform disclosure rules is the format for disclosure of information. The chosen format should present information simply and clearly, and take a minimum of time to review and comprehend. A format that is overly restrictive, or that prohibits any additional claims elsewhere in the advertisement, may place unconventional or innovative products at a competitive disadvantage. California currently requires environmental disclosures using a standard label format, and the NECPUC Model Rule includes a sample label format.(14)

If disclosures are standardized, the PSC must confront whether they will be mandatory (required of all marketers regardless of claims made) or claims-based (required of marketers only when certain claims are made). One consumer study suggests that when standard disclosures are provided by all marketers, consumers are more likely (1) to think they had adequate information to make a choice, (2) to correctly identify the lowest priced product among several samples, and (3) to correctly identify the product with the least environmental impact among sample products.(15) If disclosures are mandatory, the PSC may wish to consider allowing suppliers to use a "default" label, and to determine the default label's content.(16) Another consideration is the placement of standardized disclosures - that is, whether they must appear only in advertising that gives consumers the opportunity to select a competing supplier, or in all print advertising, or whether some alternative form of disclosures should appear in small-format print advertising and in non-print media.(17)

Each of these issues relating to label format and content raises cost concerns as well. Mandatory disclosure requirements will impose some level of costs on companies subject to them. The cost of tracking and maintaining the data necessary for the disclosure will vary depending on the type of information mandated and the degree of precision required for the information disclosed. It is likely that these costs, as well as the actual costs of making the





minimize or eliminate the discretion that incumbents may have to increase the

provider. The backup supplier would be obliged to supply power to the consumer in the event the consumer's existing supplier exits.

Regardless of the option chosen, designation as the alternative supplier may impose costs on the alternative supplier in terms of acquiring the generation contracts of the failed supplier or maintaining additional reserves.<sup>(38)</sup> Thus, the provision of insurance in the form of "emergency supply" would carry a charge. One policy to minimize these charges would be for the state to allow competition for the alternative supplier designations as well as for the primary supplier designation.<sup>(39)</sup>

## VII. Conclusion

The benefits of competition in the electric power industry may be realized sooner if the PSC conducts a study of existing market power and implements standardized information disclosures before consumers begin to choose their electric power supplier. As it implements the Plan's prohibition on joint marketing, the PSC may wish to consider the competitive implications of restricting an affiliate's use of an incumbent electric utility's name and logo and ways to protect consumer privacy without dampening incentives for new entrants to compete for customers. The PSC also may wish to consider certain competition issues as it implements interconnection standards for distributed energy resources and emergency service provider requirements.

Respectfully submitted,

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1. This comment represents the views of the staff of the Bureaus of Economics and Consumer Protection of the Federal Trade Commission. They are not necessarily the views of the Federal Trade Commission or any individual Commissioner.
2. This comment represents the views of the staff of the Bureaus of Economics and Consumer Protection of the Federal Trade Commission. They are not necessarily the views of the Federal Trade Commission or any individual Commissioner. Inquiries regarding this comment should be directed to John C. Hilke (303-844-3565).
3. The staff of the FTC has commented to FERC on electric power regulation in Docket No. RM99-2-000 (regional transmission organizations) (Aug. 16, 1999); Docket EL99-57-000 (Entergy transco proposal) (May 27, 1999); Docket RM98-4-000 (Sept. 11, 1998) (merger filing guidelines); Docket No. PL98-5-000 (May 1, 1998) (ISO Policy); Docket Nos. ER97-237-000 and ER97-1079-000 (New England ISO) (Feb. 6, 1998); Docket No. RM96-6-000 (merger policy) (May 7, 1996); Docket Nos. RM95-8-000 and RM94-7-001 (open access) (Aug. 7, 1995). The staff of the FTC also has submitted comments to various state agencies, including the Arkansas Public Service Commission, Docket No. 00-048-R (Apr. 13, 2000) (market power analysis) (Arkansas Market Power Comment); Virginia State Corporation Commission, Case No. PUE990349 (Feb. 11, 2000) (regional transmission entities); New Mexico Public Regulation

Commission, Utility Case No. 3106 (affiliate codes of conduct) (Dec. 6, 1999); Public Utilities Commission of the State of California, Docket No. R.98-12-015 (distributed generation) (Mar. 17, 1999) (California Distributed Generation Comment); Alabama Public Service Commission, Docket No. 26427 (restructuring in general) (Jan. 11, 1999) (Alabama Competition Comment); Louisiana Public Service Commission, Docket No. U-21453 (affiliate transactions) (Oct. 30, 1998); Mississippi Public Service Commission, Docket No. 96-UA-389 (Transco proposal) (Aug. 28, 1998); Louisiana Public Service Commission, Docket No. U-21453 (stranded costs) (Aug. 7, 1998); West Virginia Public Service Commission, Case No. 98-0452-E-GI (electric restructuring) (July 15, 1998); and Maine Department of the Attorney General and Public Utilities Commission, "Interim Report on Market Power in Electricity" (May 29, 1998).

The FTC staff comments are available at: [http://www.ftc.gov/ftc/15\(C\)6\(s\)-3\(t\)\(af\)\(v\)w47Vat70.t7\(e5\(.gf\)\(of\)\(v\)-1/bf\)\(ef\)\(af\)2](http://www.ftc.gov/ftc/15(C)6(s)-3(t)(af)(v)w47Vat70.t7(e5(.gf)(of)(v)-1/bf)(ef)(af)2)



14. Information about the California uniform disclosure and label requirements is available at <http://www.energy.ca.gov/sb1305/documents/index.html>; the NECPUC proposal is available at <http://www.rapmaine.org/nepage.html>.
15. "Label Testing: Results of Mall Intercept Study," National Council on Competition and the Electric Industry (April 1998) [eetd.lbl.gov/nationalcouncil/publications.html](http://eetd.lbl.gov/nationalcouncil/publications.html).
16. For suppliers that do not wish to incur the expense of maintaining and substantiating information for the label, the PSC may wish to allow suppliers to report system average information or to indicate that supplier-specific information is not shown.
17. For example, some contract terms may be more suitable for required disclosure in a contract document, whereas in advertising, it may be advisable to require that only the one or two most important terms be disclosed.
18. Plan, Section 17(b)(3).
19. Plan, Section 17(b)(12).
20. If entry is difficult or delayed, market share gained through cross-subsidization also may have persistent effects even after the cross-subsidization has been discontinued.
21. See, e.g., Testimony during Panel IV: Affiliate Rules and Codes of Conduct, Transcript of Federal Trade Commission Public Workshop: Market Power and Consumer Protection Issues Involved with Encouraging Competition in the U.S. Electric Industry (Sept. 14, 1999).
22. We note that one interpretation of Section 17(b)(8)(c), which prohibits an incumbent electric utility or any of its affiliates from stating or implying that generation services are being provided by the incumbent electric utility rather than the affiliated electric energy supplier, could be to prohibit an affiliate from using the exact name of the incumbent.
23. Payments to the incumbent utility for use of its logo could reduce prices for distribution services by substituting for revenues that the firm otherwise would be authorized to collect through distribution charges.
24. In some situations, firms may sell the right to use a logo to independent entities, contingent upon conditions and restrictions placed on use of the logo to avoid, for example, consumer deception.
25. The Maine Public Utilities Commission has established rules requiring affiliates to pay the incumbent utility for use of the goodwill reflected in the utility's name. The payment is determined according to how soon the utility succeeds in earning its authorized return on equity. Maine Public Utilities Commission, Docket No. 98-077 (July 7, 1998). The rules provide a three-year initial payment period followed by a reassessment, with an additional three years of payments, if necessary, to bring down the value of the goodwill asset to zero. *Corporate Goodwill*, Public Utilities Fortnightly 16 (Oct. 15, 1998).
26. In most locations DER applications are expected to operate in conjunction with the grid. An expected application of DER is for it to operate only during periods when electric power prices are relatively high. This benefits the customer with DER, which is less expensive than power from the grid during these periods. DER customers also may benefit from having a connection to the local utility's distribution grid because (a) the grid may be a backup supply of power when the DER unit requires maintenance; and (b) the grid may afford the DER customer an opportunity to sell power to other electric power consumers if the DER unit has excess capacity. At the same time, customers who rely exclusively on power from the grid may benefit because reduced load on the grid during peak periods may allow the grid operator to avoid dispatching the highest-cost plants during peak periods.

27. Bliley Letter at 14.

28. Another competitive concern is that utilities will attempt to raise the costs of providing natural gas service to fuel DER facilities. Where the same utility provides both electric and gas distribution services to an area, the utility may have incentives to raise the costs of DER rivals by manipulating both electric and gas interconnections. The PSC may wish to include provisions on natural gas access for DER facilities in areas served by a gas/electric combination utility. See, e.g., Federal Trade Commission, "Analysis of Agreement Containing Consent Orders To Aid Public Comment in In the Matter of Dominion Resources, Inc. and Consolidated Natural Gas Company," FTC File No. 991 0244 (Nov. 8, 1999) <

38. The least costly scenario would likely be to supply the customer with electric power purchased from the wholesale spot market. Although this type of service may involve few costs for reserves, it would likely involve exposure of the consumer to the risk of high wholesale spot market prices. If generation services used to satisfy a consumer's load are removed from the grid, it may be important to transfer the failed supplier's generation contracts or facilities to an alternative supplier in order to maintain grid stability in the event of failure of a supplier.

39. Where advanced metering and billing technologies allow a customer to purchase power from different suppliers at different times of the day, the customer may effectively have already expressed a preference for alternative suppliers.