FEDERAL TRADE COMMISSION

MARKET POWER AND CONSUMER
PROTECTION ISSUES INVOLVED
WITH ENCOURAGING COMPETITION
IN THE U.S. ELECTRIC INDUSTRY

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9:00 A.M.

MOOT COURT AUDITORIUM
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C O N T EN T EB
Waldorf, Maryland

SESSION VI: SUPPLIER PRACTICES IN A RETAIL ENVIRONMENT

Introductions:

Panel Discussion:

P R O C E E D I N G S

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officials, and our federal agency partners, FERC, EPA restructuring, you can contact any of us.

Now, there is a small -- there's a little brochure that's out on the table where you checked in, and if anybody would like to take that with you, it gives all the contact information, and we'd like to hear from you.

Now, on behalf of the Council, let me say a couple of words here about the FTC's work on this conference, and I want to thank Mike Wroblewski and his colleagues at the FTC for putting this conference together. I think the program is terrific, and you all have done just a great job.

I'd now like to turn the floor over, as it were, to an FTC Commissioner, Mozelle Thompson, who isn't here today, but I understand will be speaking electronically.

COMMISSIONER THOMPSON: Good morning. I'm pleased to be able to address you today, even if only by videotape. I'm Mozelle Thompson. I'm a Commissioner here at the FTC, and I welcome you to the second day of the FTC's workshop on market power and consumer protection issues in the electric power industry.

I hope that all the participants found yesterday's program interesting and useful. This workshop is especially important, because as markets become more competitive, antitrust and consumer protection enforcement issues will grow in importance, as well.

Although federal antitrust laws are not a panacea for all competitive concerns, their application can help in the transition to competition by ensuring that mergers don't exacerbate market power problems or shield incumbent companies from new competition. Antitrust laws can also help by preventing anticompetitive behavior.

Experience demonstrates that competition among market participants will ordinarily provide consumers with the benefits of low prices, good products and greater innovation. In principle, these benefits should be provided to the electric power industry, as a century of regulation gives way to competition, but the benefits won't be achieved without, among other things, vigilant antitrust enforcement and consumer protection.

Today's panels continue to address market power issues and states have confronted. Specifically, we're interested in hearing how states have used affiliate rules or codes of conduct to remedy problems posed by incumbent utilities' market power to prevent deceptive practices. Each state has taken a different approach in crafting their own codes of conduct, and those craftings depend a lot on the factors present in each state.

The FTC is interested in hearing how these codes have enhanced or inhibited competition, what consumer expectations and reactions have been and the relationship between these rules and the offering and pricing of new and innovative products.

One of the FTC's first priorities in this area has been to educate businesses, because a competitive market will rely on advertising and promotional activities, we are engaged in efforts that will educate electric power providers about existing consumer protection laws that will apply to their business practices. For the competitive retail electricity market, electricity service providers are likely to make a broad range of advertising claims, including claims about the nature of the services being provided, the company selling the electricity and the price for the service. I expect the FTC, as well as states attorneys general and public utility commissions, will be active in policing against false and misleading advertising, just as they do now for most other products.

We've already seen the use of environmental advertising in those states that have opened their markets to retail competition. Many consumers are interested in the environmental qualities of the electric power that they buy, and some are willing to pay a premium for environmentally friendly electric power.

There is, however, a great potential for abuse of environmental claims because of the premium price involved and because consumers can't easily verify any of these advertising claims themselves. We're interested in hearing how these products are being developed and what your experiences have been.

A second area where the FTC expects to be active in deregulating the electricity market is in policing various unscrupulous business practices, and some of these will sound very familiar to you. Based on just the experience in the telecommunications industry, we may see practices like slamming, which is changing the customer's electricity supplier without authorization, and cramming, which is placing unauthorized charges on a customer's bill. And these may be practices engaged in by dishonest electric service providers as markets become deregulated.

Today, I hope we'll learn a little bit about how states have begun to address these issues. So, we hope that this workshop has provided and will continue to provide a useful forum for discussing the state experiences in these areas and for targeting new directions for state policy makers as well as the federal government.

Thank you all for attending, and please enjoy the workshop.

(End of videotape.)

MR. LAWTON: Good morning, my name is Ray Lawton, one of the co-sponsors of this outstanding conference. The National Regulatory Research Institute is pleased to be involved and assist the Federal Trade Commission in doing this.

I wanted to make just a few little comments about yesterday just to set up the context for our focus today on codes of conduct. I think it was -- when you look at the organizational principles we use to depict the speakers, we really did yesterday focus on the pioneers, and I think that's really important for us all to draw upon, and I thought to myself, what lessons did we really learn from yesterday? And I am just going to point to two and then get to the codes of conduct.

One is that it was economics-driven, that while we all have a very strong belief structure in introducing competitive markets, the economics is what did it. I think you heard Paul Vasington, you heard Herb Tate yesterday talk about the fact that they were from high cost states and they didn't necessarily have ambitions that they would be driving their costs below the national averages, but that they did have the ambition to make improvements that would show up in their state.

The second thing that I think all of them did is they all had nontraditional regulatory proceedings. Now that's somewhat profound, although maybe we've all gotten used to doing that, but that really is a big difference. The state regulators, the federal regulatory commissions, have always had procedural correctness as an important norm, but all of them have said those things that went better in our state were because we involved all the stakeholders early in the process and through every stage of the process.

The -- I think one of the things that the pioneers also discovered really was unbundling is the key. I think if you knew nothing else about any industry, the moment you see unbundling occur is the moment you see the beginnings of competitive entry. In effect, yesterday I think Greg 8eaeculsmll the sd all thkeyTD (ee opportunities to take advantages of the difference in

So, I guess really without further ado, I'll introduce Commissioner Orson Swindle and ask him to come up on the

SESSION IV:

AFFILIATE RULES OR CODES OF CONDUCT

PANEL A:

HOW HAVE STATES DEVELOPED AFFILIATE RULES OR CODES OF CONDUCT?

COMMISSIONER SWINDLE: Good morning. It's always nice to be among Baptists, and I would assume that you're -- most of you are Baptists, because you're sitting in the back of the church, so to speak, and you're probably afraid that somebody will pass the collection plate here.

It's nice of you to come and participate with us in this endeavor. Michael Wroblewski and his team of people have devoted a lot of effort to this and I'm sure coordinated a lot of views to bring about a conference on what is obviously an incredibly important if not also an awesomely complex issue that we are all trying to figure out how to cope with, and that's competition within the power generation and power distribution process within our economy.

I -- once when I was a youngster back in the fifties heard Adlai Stevenson give a speech, and he was speaking at about 9:00 p.m., and they had just had this great sumptuous repast, and if any of you have ever spoken after banquet, you know it is often difficult to keep attention. The audience -- he got up and said his job here tonight was to provide absolutely entertaining, informative discussion with the eloquence that he was noted as having in delivering speeches, and then he turned to the audience and said, Your responsibility is to pay very close attention to what I'm saying, derive great benefit from what I'm saying and stay intently interested in everything that I say. And then he said, I pray to God that I finish my work before you finish yours, so that everybody were awake. Now, I want you to pay very close attention to these guys. They are experts. I am no expert. I would not even begin to pretend that I know much about this subject, but these guys do. Their job is to inform you of all their wisdom and their experiences, and your job is to ask 15 minutes worth of questions so that I don't have to fill in the void when this is all over.

I am not unfamiliar with codes of conduct. As some of you may know, I spent a career in the military and had some adversity in my life where the code of conduct had a lot to do with survival and doing what we were supposed to do. Our code of conduct, to a certain extent, first was driven by fear, and that's a fear of failure, but primarily it was driven by several other attributes that I think make military people somewhat unique in our society. That's not meant to be a disparaging remark to those who were not in the military, but it was driven by a requirement to measure up to the standard of honor and integrity and patriotism. It was morally driven, in other words. We do it because it's the right thing to do.

Now, I would -- not being an expert, but I think I can venture out a wee bit and speculate that the private sector, which I happen to be a great advocate for, and even those people who are now venturing into the private sector that have been regulated and basically had a sweet heart deal for a long time, I doubt seriously if they are driven by honor, loyalty, patriotism and some moral crusade. That's not the way the world works. They are driven by, oh, you know those typical things, profit, wealth, greed, power, and, you know, you can probably name a few other things, having advantage of other people with they have tended to enjoy. So, the two kinds of codes of conduct don't really match up, but I would suggest if there were a way -- and there is not -- that we could impose my form of code of conduct on industry and have it use that as its code of conduct, we probably wouldn't need to have this conversation; however, that's not reality. It was a pleasure to see electronic Mozelle Thompson here. He is somewhere out in cyberspace, and he would have been here, except his ever ready batteries ran down and he couldn't really get here, but I'm sure he would have enjoyed being here with you, and he's a fine guy and he certainly has a great interest in this subject, and anything that has to do with electricity, walks around with cell phones and palm pilots and things like that, and he's a neat guy with a lot of intellect and as I said, a lot of interest in this subject.

We have three very distinguished guests here today to entertain you, inform you, educate you, and what's your job -- to pay attention and be prepared to ask 15 minutes worth of questions when I finish talking -- when they finish talking.

First, I want to start at the end and ask Judy Sheldrew if she would start off the conversation, and just a little bit of background here, if I can read without my glasses, which -- I'm having senior moments these days. Any of you have -- are you old enough to have senior moments where you forget to do things? I forgot my glasses, but Judy has led the debate in Nevada regarding -- I said that right, too, Nevada, right, not Nevada? I was told that in rather profound terms one day by the Governor. She's led the debate in Nevada regarding the appropriate code of conduct for utility affiliates, as I understand it, before Nevada promulgated its rules, the Public Utility Commission undertook consumer research to assess consumer impressions about the use of parents' name and logo by an affiliate. I had a thought here, when we were talking about -- and I think it was Ray was talking about the way this has all -- this whole business of

Thanks very much, Commissioner Swindle. I certainly do appreciate being invited today to talk about an issue that is becoming near and dear to my heart. I didn't know how near and dear to my heart it was going to become when we entered into the fray of talking about affiliate relations in Nevada, but have found that we have expended a considerable amount of time on the issue, because it, strangely enough, is an issue that's very near and dear to the hearts of the incumbent utilities.

Before I begin, let me just point out that I do have some outline comments that were included, I think behind Tab IV, in the book that was passed out and also for some of you lucky folks that were able to get here and picked up a mysterious document entitled Exhibit 59, you have a copy of the study that was done for us by a consultant to determine the degree to which customers are confused by the use of a similar name or logo to that of a parent, and I'm going to go through that a little bit today; however, Michael has indicated that for those of you that did not pick up copies, within a week or so, we will have it on their website, and you are more than welcome to have copies of the study. I think it's a -- excuse me, a fascinating study, and it certainly influenced the decision that we ended up making on our affiliate rule, an affiliate rule that has been described by the utilities as being one of the most onerous in the United States. I doubt that, but that's what we are repeatedly told.

Also, just to correct, the title that has been assigned to me in the agenda, lots of things have changing in the electric industry, and I'm no longer the chairman of the Public Utilities Commission. I am, however, a commissioner with the Public Utilities Commission of Nevada, and I certainly don't want anyone to be confused about what role anybody plays in the state of Nevada, at least at this point in time.

First of all, let me begin by just giving you a little bit of background on what we have done in Nevada to try and bring about a competitive marketplace. Nevada was faced with I think probably a challenge that perhaps some of the pioneer states that were here yesterday did not have, in that we aren't considered to be nationally a high cost state. So, the question then says, Why did you decide to go to competition? Well, there was still a great deal of economic push from some of our large consumers who thought that they could do better. California, the 800-pound gorilla to the west of us, had decided to go. We felt that it was inevitable, that there was going to be some push toward the east, and being situated geographically next door to California, we felt it was time for us to go, and clearly I think the impetus from the Federal Government, that they were considering taking some action, at some point in the near future, Nevada being quite an individualistic and frontier state, decided we'd rather write our own rules than wait for the Federal Government to tell us how they would like us to proceed.

So, in 1997, the Legislature passed a comprehensive restructuring bill. I was honored to work with the legislative committee, and the Legislature at the time to help develop that -- that bill, and it's a bill that I think absolutely addressed many of the market power issues that we faced in Nevada on a going-forward basis.

Perhaps the most important charge that the Legislature gave to the Nevada Commission was that we were, unlike the days of old, to balance the needs of rate payers and shareholders and assure fair and reasonable rates, which, of course, was not removed, we were assigned a new responsibility, and that responsibility was to assure that we encouraged and enhanced the development of a competitive market for the provision of utility services in Nevada.

Now, that gave us quite a bit of license to do and make changes that we think would bring about a competitive marketplace, whereas before I think we would have been somewhat more constrained. As was discussed early this morning, the first thing that our bill required us to do was to unbundle. You cannot have -- I truly believe you cannot have any kind of effective restructuring without unbundling. And by unbundling, in our sense, we don't mean just generation, because it can be competitive. What we essentially broke out generation, both capacity and energy and identified those as separate services. We identified generation to support transmission as a third service. We identified arranging for power supplies or aggregation as another service. Power delivery, transmission and distribution as another service; billing as a separate service; customer services as a separate service; metering -- and I will talk a lot about metering -- and public goods, all as separate services.

Once we had defined that, we went through the collaborative process of using all the stakeholders assigned the stakeholders when they didn't have any real dollars at stake the opportunity and the responsibility for developing exactly how -- when we got to the point when they had dollars at stake we should allocate the costs. So, it was a lot more friendly atmosphere, because people weren't talking about millions and millions of dollars like you do in a rate case or in a proposed settlement. They were just talking theory at the time, and those were going to be the rules by which those utilities had to submit their final unbundling compliance filings when we got to the end of the road. We did that early on. People at that point were fairly friendly, and we had a -- I think a very successful experience in coming up with the rules that we were going to use.

After we'd identified the services and set the rules for how it was that we were going to allocate all the various costs of the unbundled services, we then set up a process by which we were going to identify which of the unbundled services could truly be offered by alternative sellers, and the entire philosophy in the Nevada market is to identify those services that can be offered competitively and those services that cannot.

As a result of some proceedings that we held, as well as then the 1999 legislative follow-up, the following services have been identified as being competitive in the State of Nevada, and that's generation, it's aggregation or arranging for power supply, it's billing, it's metering and it's customer services. So, all of those services are capable of being presented and offered by alternative sellers and are not, in our opinion, any longer a monopoly service.

There were certain requirements that we had to measure to be sure that these services met that particular test. For example, no cost decrease or service quality -- there had to be a cost decrease or service quality increase in order for them to be deemed to be what we called potentially competitive; no harm to any class of customers. It had to improve the economic position of our state relative to surrounding states, which was our tip of the hat to the economic development efforts going on in all of the states. It could not harm reliability, and it had to be such that it was most likely that effective competition before that service could develop in order to make it into the list of those potentially competitive services.

But we've completed that now, and we now have a market that we hope to entice sellers of all of these various services into, and those services for which competition is possible, while not being deregulated, are certainly going to be subject to a lot less regulation. For example, the sellers have to be licensed, and there may be -- if there is some kind of market power -- for example, for metering, some kind of price cap or something that's established until such time as we've got sufficient competition so that we can remove ourselves from that arena, but it was a major undertaking, but I think one that was well worth it, because we have now identified what markets really are available for these alternative sellers to come into the State of Nevada.

You can, by doing your math, conclude then that the noncompetitive service that we concluded were left transmission and distribution. So, the T&D portions of the unbundled service, of course, are still going to be regulated as they were before, distribution by the state commission and the generation component by the Federal Energy Regulatory Commission.

I will skip over the -- temporarily the affiliate and what affiliates of the providers of the noncompetitive service can do and just simply say that once effective competition comes to the market, the Commission is responsible for determining what the particular market is, what the market share of the particular sellers are in that market, and then calculate the market share to determine whether or not we, indeed, have effective competition, and once we find that, then the interim rules, these price caps and those kind of things, will be removed, and they truly will be more of a deregulated service than they are essentially a reregulated.

Now, what about the affiliates of the utilities? We did not want to foreclose the opportunity for utilities to participate in the competitive separate their activities, but certainly for regulators to assure that there isn't any, shall I say, mischief, which is one of the people's terms that's being used frequently in front of us. It's much easier to track if they're in a separate affiliate, and the utilities, I think, can really assure themselves that it's a much easier operating environment if they were to go forward and form the affiliates.

I will say that we have now gone through the phase of having the hearings as to whether or not our two existing incumbent utilities met these tests, and they didn't pass with flying colors, unfortunately. Both of them were turned down. They were urged to resubmit their applications. They simply had not done the kind of work about developing the separations, the protocols, the kinds of things that you would expect to see between corporate affiliates that would give us the assurance that the four criteria that were outlined in statute were met. We're certainly hoping that they take another stab at it. They have indicated that they would like to compete in the competitive marketplace, but until such time as they can assure us that they can meet those requirements, we really can't feel comfortable that there isn't going to be some anticompetitive behavior that's going to really adversely affect the development of a competitive market.

Now, for those of you that might be worried about what's going to happen to all of their utility assets if they can't go into the competitive marketplace, rest assured that we gave them the opportunity to put those assets into stranded costs with the opportunity to recover them at the end of the stranded cost proceedings, which are probably going to take off later this fall, but we are hopeful that they will re-address that particular issue. It's a huge issue. It's -- and it's very important that we have the information that gives us the assurance that there are truly separations.

The next slide goes into very briefly the codes of conduct rules for the utility affiliates. We, of course, outlined the rules for the arm's length relationship that we thought was appropriate between the distribution company and the affiliates. We did not prohibit the use of shared services, but we limited the use of shared services, such things as office services and those kinds of things we thought were appropriate only if the affiliate and the noncompetitive service provider submitted a contract that showed us exactly what the services were, what the relationship was going to be and those kinds of things.

In so doing, I think we were really trying to address the issue -- the economies of scale that I think between the holding company and its affiliates, but that was their latest response as to how to share, quote, "employees" without necessarily violating the particulars of the affiliate rule.

We also required that there be no discrimination in the provision of services to the affiliates and other alternative sellers, I think something fairly standard that you see in the affiliate rule. We established transfer pricing rules for the transfer of goods and services between the distribution company and its affiliates, and they are noted there, the distribution company transfers of goods or services to an affiliate must be priced at fair market value or fully loaded cost, whichever is higher, and the affiliate transfer of goods and services to the distribution company shall be priced at fair market value or fully loaded cost, whichever is less.

In the interest of time, I'm not going to go through the rest of the material that follows, but I want to just touch briefly on the study that we did. It was a study that was recommended, frankly, by the FTC, who participated in our affiliate proceedings. Our affiliate proceedings, by the way, were brought about as a result of a complaint from the heating and air conditioning folks when Nevada Power tried to get into that line of business. They complained, and we did issue a cease and desist order that we felt that what Nevada Power was doing was an unfair competitive advantage. So, they asked us to get into the affiliate rule, and the hearings really lasted probably about two years to try and get to where we ended up on the affiliate rule.

But at the -- our original rule said that the affiliate may not have a name and logo that's deceptively similar to the distribution company, and it may not advertise its affiliation with the distribution company unless the affiliate includes a disclaimer stating that the affiliate is not the same corporation as the distribution company.

The utilities went to the Legislature and got the Legislature to say that they could, indeed, use their name and logo. So, this obviously was an important issue to them, but one of the reasons that we thought we -- and we felt compelling evidence indicated that there was not only a potential subsidy -- cross-subsidy issue between the distribution company and the affiliate, was the fact that we conducted a study for -- that was done for us by a consultant that the FTC uses wherein there were eight advertisements that were used with fictitious names of companies, one of which was called Nevada Power Energy Company. The other two were names that no one had ever heard before. A couple of the Nevada Power Energy Company had disclosures on them, because we were trying to figure out whether disclosures were effective in warning customers it wasn't the same company, and one of them had an entirely different name but said it was the affiliate of the utility company.

Just to give you the results very, very quickly, to the four questions. The first was, do respondents confuse Nevada Power Energy with the Nevada Power Company, the parent electric company, and this was with no recognition that there was an affiliate and no disclosure. Bottom line, when asked directly how much or how many of their -- how many of the people thought that one of the two companies that they'd been shown -- and they were shown in Nevada Power Energy and a Horizon Energy ad, 85 percent of the respondents believed that the Nevada Power Energy Company was their energy company. When shown the same ad with the disclosure that advertised that it was not the same company, 73 percent of the people still thought that Nevada Power Energy was the energy power -- their energy provider.

Now, when you use an unfamiliar name with a disclosure, the question is, do you reduce the tendency of people to believe that that is their energy company, and it dropped to 3 percent. So, I think that the evidence is fairly overwhelming that customers can very easily be deceived by a name that's very similar to the existing utility company that they've gotten power from for over a hundred years if they just call themselves Nevada Power Energy Company or something very similar and use that logo.

Based on that evidence, we felt very strongly that they should not be able to use their name and logo, but we were persuaded otherwise, and so in closing, I guess I would leave the Federal Trade Commission with a question and urge the Federal Trade Commission to continue to look into these kinds of things, but, you know, the question that I'd like to close with is if a state law says that a parent company can use the name and logo for an affiliate and such use takes place in interstate commerce, is it jurisdictional to the FTC, or are they -- are they, the affiliate and the distribution company, protected by the state action doctrine to go ahead and use the deceptive advertising?

It's a question that's come in my mind as a result of the legislative action. As I hope you can tell, we have done quite a bit of work in Nevada. It's an interesting subject, and I look forward to the comments of the rest of the panel.

Thank you.

(Applause.)

COMMISSIONER SWINDLE: Thank you, Judy. I think in my very brief introduction, I neglected to say that Judy is the Chairman of the Nevada Public Service Commission, and I apologize for that Judy. Thank you.

Our next speaker is Assistant Attorney General Francis Ackerman. Francis has been a leading figure in the debate in Maine over the appropriate role of utility in a deregulated environment. He has confronted directly the vertical discrimination issues surrounding the use of codes of conduct, and we look forward to hearing about the Maine experience, Francis. Thank you very much.

MR. ACKERMAN: Thank you, Commissioner.

Good morning. We have been having many of the same discussions in Maine as you have in Nevada, and thank you, that was very informative, Judy, but we haven't always arrived at the same outcomes.

Let me give you a quick thumbnail background. Maine enacted its restructuring law in mid-1997 with retail choice scheduled for March of 2000. The statute requires incumbents not only to unbundle but to divest generation. That -- I'm not sure if that's unique among the states, it may be. It requires corporate separation of retail marketing activities from the T&D. It includes explicit principles for a code of conduct governing the activities of T&Ds and their retail marketing affiliates, as well as a provision -- and this may be unique, as well -- limiting the market share of a T&D affiliate in the T&D service territory.

I became involved in learning about this rather abstruse subject when as one of two Assistant Attorneys General assigned to antitrust, and incidentally, now I'm sufficient in and of itself to produce competition like a rabbit out of a hat after a century of regulation.

In newly competitive markets, it's essential to find ways to encourage new entry. Without entry, the incumbent vertically integrated monopoly will simply be exchanged for an unregulated one, and then what happens to lower prices and innovation?

A primary barrier to entry in a newly deregulated electricity markets is the vertical market power held by the incumbent utilities. Unless it's barred from retail marketing in the utility service territory or its activities are effectively monitored and policed, the incumbent can gain market advantage by giving preferential treatment to its competitive affiliate, shifting costs to the regulated entity and simply by cashing in, as Judy's been discussing, on the tremendous good will built up by the incumbent during the regulatory regime.

Management has a duty to explore -- and Commissioner Swindle alluded to this -- to explore all lawful avenues to derive advantage and profit, including the exercise of vertical market power, and they can be expected to do just that. As they size up potential markets, new entrants are likely to be discouraged by the prospect of facing entrenched vertical market power and may decide not to enter.

Maine's code of conduct and market share limitation represent an attempt to address this problem, the problem of vertical market power. I'm not sure that I would advertise Maine's approach as a model worthy of emulation in all respects. It's a product of the usual sausage factory of vigorous debate followed by a legislative compromise, but perhaps some features of the compromise which emerged may peek your interest as I describe them in a little bit more detail.

Let me begin with the code of conduct. The code bears some broad similarities to Nevada's, and it's provided, by the way, in the handout, a copy of the -- its most recent July iteration. It will incorporate some additional pieces that were mandated by the Legislature in a recent enactment, as well, but that's noted in the handout.

The code governs and restricts the conduct of T&Ds and their affiliates and can be summarized, broadly speaking, in six principles.

First, no favoritism. The T&D cannot accord its affiliate preferential access to regulated products or services or information. The corollary is the second principle, no cross-subsidization. The T&D may not subsidize its affiliate at rate payer expense without specific authorization, and that's permissible in certain areas.

The third principle, no tying. A T&D may not condition provision of a regulated product or service on the purchase of an affiliate's products or services. And fourth, a set of information restrictions, the T&D may not share with any retail marketer, including its affiliate, market information acquired from other marketers or developed in the course of providing T&D service and may not share proprietary customer information without the consent of the customer.

A set of -- fifthly, a set of representation restrictions. The T&D may not give the appearance of speaking on behalf of the affiliate, may not represent that any advantage in terms of T&D service accrues to customers of the affiliate, may not engage in joint marketing with the affiliate, and that was controversial in Maine, as in Nevada, although it's still in place, and may not opine on the relative merits of retail marketers.

Finally, the sixth principle, separation. T&D employees may not be shared with the affiliate. There's a -- room for the utilities to seek an exemption from that in certain cases. It must have separate buildings, separate telecommunications and computer systems, separate records and books of account, and I'll also note briefly the penalty structure, which was the subject also of considerable debate. What we ended up with was a set of fairly comprehensive penalties which allow for $100,000 a day or per violation administrative penalty, disgorgement of profits, and as a last resort, divestiture of the affiliate, which can only be in cases of intentional violation causing substantial competitive harm.

Let me zoom in for a second on the joint marketing ban. As in Nevada, the -- this provision was interpreted to bar affiliate use of the T&D name and logo, and as I mentioned, was the subject of a lot of controversy. The fundamental reason for imposing the ban is I guess the difficulty of disassociating the two entities in the marketplace, if you don't have such a deception.

Let me turn to the market share limitation. Maine limits the market share attainable by a T&D affiliate in the T&D service territory of 33 percent of kilowatt hours sold annually. Incidentally, that applies only to Maine's two largest T&Ds. The smallest one, Maine Public Service, which has a territory in the extreme north which is not part of the New England grid, got an exemption from that.

The purpose of the market share limitation is very straightforward. It's to prevent a T&D affiliate from amassing a dominant market share and to ensure that its perceived ability to do so doesn't chill new entry. Now, when I started out, I mentioned that I might not advertise Maine's approach as a model, but I don't mean to run it down either. Maine's approach represents what you might call a relatively strict variant of behavioral regulation, and if you're going to have a code at all, I'd submit that it's a pretty reasonable and creditable effort.

The problem I have with it is philosophical. Like my antitrust colleagues at DOJ and the FTC, I'm not a big fan of behavioral regulation. I'd rather see competitive markets designed from the outset in such a way as to minimize the need for regulatory intervention and let competition do its thing. It seems to me that there's something incongruous about a deregulation effort that involves so much new regulation, not just residual regulation, but new regulation, and I think more consideration should be given to the possibility that the best cure for vertical market power -- and perhaps other forms of market power, as well, in emerging electricity markets -- is prevention, de-integration, and in the particular instance that we're discussing here, a ban on retail marketing by utility affiliates in the T&D service territory, at least during the transition to competition.

The Maine Attorney General and, indeed, our PUC, as well, argued long and hard for such a ban and lost the battle. But as it turns out, that defeat was to a large extent academic. Since of Maine's three incumbent utilities, only the smallest, which is, as I mentioned, in the extreme north and not part of the New England grid, as elected to market its electricity at retail in its service territory through an affiliate.

So, we have no ban, but we do have a market which is perhaps less prey to vertical market power than some others. The proof of the pudding is in the eating. We hope that potential entrants are listening and will promptly commit to entering Maine's retail markets.

Thank you.

(Applause.)

COMMISSIONER SWINDLE: Thank you, very much, Francis, some intriguing thoughts there.

Commissioner Paul Vasington has spearheaded a debate in Massachusetts over the appropriate provisions in a utility code of conduct. In addition, Massachusetts has had an extended debate as to the range of competitive activities to which the code of conduct should be applied. I know the audience should be quite interested to hear the reasons behind Massachusetts Commission's decision to limit the code of conduct to only those energy or related activities in which a utility engages.

Paul, thank you for being here.

MR. VASINGTON: Thanks, Commissioner Swindle. I'm really intrigued by your suggestion that we adopt more of a military code of conduct for the industry. I think if it can work in the electric industry, I'll try it out in the telephone industry, where you can't even get people to stipulate that the earth is round.

I'll try to leave enough time for questions at the end, but I'd like to just give you a little bit of background on the principles behind our standards of conduct in Massachusetts and describe a few of them. You have heard most of them from the other panelists. And also, I'd like to comment a little bit on an FTC staff report on our standards of conduct, which was generously done for us last fall.

Our standards of conduct are designed to govern the relationship between the monopoly provision of services and the competitive offerings of the monopolist or an affiliate. Now, anyone who was here yesterday may recall that all of our distribution companies are now out of the generation market. We have seven distribution companies in Massachusetts, and only a couple of them even have competitive affiliates who are participating in the now competitive generation market.

There are other services, however, that a distribution company or an affiliate can provide other than just the generation services, including heating and maintenance, boiler repair, HVAC, things of that nature, and now also electric distribution companies are getting into other services, like telecommunications, for example.

The reason we have to have these kinds of standards of conduct is that the monopolist has an incentive to subsidize an affiliate by shifting costs to the monopoly function. It also has an incentive to discriminate in favor of its own competitive services or those of an affiliate and to steer business to its competitive offerings.

That doesn't necessarily mean that they're doing that, but the -- I think an appropriate regulatory framework deals with what a company's incentives are, not what its intents are.

Now, generally speaking, the principle behind our standards of conduct, what we tried to achieve was to make sure that we prevented artificial advantages from accruing to the benefit of the utility's competitive services while allowing the utility and its affiliate to benefit from legitimate scope economies, which ultimately benefits consumers. It's really trying to walk a fine line and trying to balance the benefits of scope economies and the cost of -- with the cost of regulation and the potential for that regulation to be ineffective. Any restriction at all, no matter how legitimate, does mean you're sacrificing some scope economies, and many of you may recall the reason the Reagan Administration in the early eighties insisted on breaking up AT&T, which was a pretty onerous action for a -- for a government to take, was that the -- William Baxter felt that the regulation that would be required if the company stayed together would be huge. It would be tremendous -- it would require tremendous regulatory infrastructure to police those kinds of relationships, and I think the last three years experience under the telecom act of '96 shows that he was right; however, we as policy makers have made the decision that we probably sacrificed too many scope economies in doing that. So, there's always those trade-offs that have to be evaluated at different points in time.

The kind of restrictions we've adopted in Massachusetts include issues related to nondiscrimination, requirement for separate books of accounts, prohibitions against information sharing and joint advertising and tying arrangements. We also require a utility to maintain a log of transactions between itself and its affiliates. We've established a complaint resolution mechanism, and we've also established transfer pricing rules to guide how assets transferred and services provided have to be reflected.

In addition, we have penalties, similar to what Maine has. We have $25,000 a day and a maximum up to a million dollars financial penalties, and if you think that's bad, we've recently had legislation filed to make it a criminal felony for standards of conduct to be violated, and I can just imagine the utility executive going into lockup and having someone say, What are you in for? And he says, Well, I transferred an asset at book value and it was supposed to be transferred at market value. That legislation hasn't gone anywhere yet, but it will be interesting to see how that happens.

As I mentioned earlier, the Economics Bureau of the FTC staff was kind enough last year to do an evaluation of our standards of conduct, and that was issued last October 8th, and I'd like to comment on a few of the conclusions that were made by the staff on our standards of conduct.

As I mentioned, we have a transfer pricing regime in Massachusetts, and just generally speaking, the transfer pricing regime requires that the transfer of rate-based assets from the utility to an affiliate shall be priced at the higher market value or book value and the transfer of assets from the affiliate to the utility shall be no greater than market value, and the provision of services between affiliates and the -- and the utility shall be at fully allocated cost.

The FTC staff indicated that they are less sanguine than we are about the possible success of the transfer pricing regime and suggested that we may wish to add a market-like institution to govern transactions between regulated parent utilities and their unregulated affiliates. Essentially a market-like institution, I think what we were contemplating would be some kind of auction requirement that the utility would have to put out to bid for services that it wanted to obtain, and then its affiliate could be one of the -- one of the bidders.

I'm not sure at this point that that kind of structure is required. The -- in the telecom industry, where we modeled our transfer pricing rules after what the FCC had done, they have used transfer pricing rules for a number of years and I think fairly successfully, and I think a market-like institution to govern transactions, while it would probably give you a greater degree of certainty, it really is a -- probably an expensive proposition to undertake and really should only be done with proof that the transfer pricing regime isn't working, but I think that's what the staff was suggesting, but at this point I think we' TDnrgs provides that no advantage accrues to the affiliate by its relationship with the utility and that the utility's services provided by the -- the monopoly utility's services won't be any better because of taking service from the -- from the affiliate, and we really felt that that was as far as we needed to go for a couple reasons.

One was in our order we questioned whether or not restrictions on the -- or prohibitions on the use of the name and logo would be constitutional. I'm not a lawyer, so I can't address the details of that or really answer questions about that, but I would -- if you're interested in that topic, there is a recent article in Public Utilities Fort Nightly by Harvard Professor Ogletree addressing this issue, and they are pretty similar to the conclusions we've reached.

And the other reason we didn't adopt such a prohibition is we felt it is really not appropriate going into a competitive market to restrict information that customers may choose to use to make their decision. Part of the premise of going to a competitive market from regulation is that customers can choose for themselves better than we can choose for them. I think part of that is customers should be able to avail themselves of whatever information they want, including information about the affiliation. Why is it wrong for a customer to decide, Hey, I liked the service I got from my utility, I'll probably like the competitive service that they're now offering, subject to the disclaimer that gives the customer the information that they're not getting service from their utility when they're taking the affiliate's.

Think of what happened when AT&T, which was probably the strongest brand name in the world, moved into other markets. They went into the credit card business, where they didn't have any historical experience, and they became the second largest credit card provider in a very short period of time. Prior to buying McCaw Cellular, when AT&T had never offered any wireless services, consumer surveys showed that a third of the people felt that AT&T was the best provider of wireless services, and they had never even offered -- offered the service, which isn't to say that those kinds of brand associations are always favorable. Often times they're negative. I can think of a few utility

The last issue that was addressed by the FTC staff, which I'd like to just mention, was the application of our affiliate transaction rules to nonenergy affiliates. We felt that -- the reason we restricted most of our standards of conduct to just energy-related affiliates was that that's -- those are the markets where the utility provides an essential input to the -- to the final product, and we felt that it was necessary in those markets to adopt these requirements. The only requirements that we adopted -- that we required a nonenergy-related affiliates to abide by were the transfer pricing rules to guard against cross-subsidization, which doesn't really matter whether you're energy related or not energy related, and tariff services, essentially that the affiliate cannot get any advantage in the taking tariff services.

The other restrictions, including the disclaimer attachments, which is governed by a separate statutory scheme, which is applied to that relationship, and we look forward to your questions.

Thank you.

(Applause.)

COMMISSIONER SWINDLE: Thank you, Paul. As with all conferences, I've never been to one in my life, you never have enough time to hear from people with such experiences these have, and it just seems to me there is never enough time. However, I did make one command decision, I looked at my watch, and it's five minutes, almost five and a half minutes after the hour, and I look up at that clock on the wall and it's 12 minutes after, and I realize where I am, and I've always heard about lawyers jimmying time and billing, and I just assume that that clock is wrong and mine is right, so we have got five minutes before the break and there should be time for some questions.

I have to ask one quick question, is there anybody here from Hawaii? Thank God, thank God. The People's Republic of Hawaii, if they heard about this scheme to put people in jail for these kind of infractions, they would have adopted it. They love regulation in that state.

Okay, who paid attention and who's got

questions? We better have a lot of them, because the doors lock automatically and I have a pistol that I want to--. Yes.

ALLISON DAVIS: I think everybody can hear me. I'd like to address this to Ms. Sheldrew, and it's partly because I'm from California and I'm familiar with some transmission issues where they cross states, and we also saw a map of the ISO and the Commissioner from Ohio the south clearly is Southern California. So, what --

on and the considerations that you would take in the market, the realities of the marketplace.

MS. SHELDREW: Right. One of the things that we've learned in Nevada is that as you move forward in this unbundling, the lines of FERC and the lines of the state get very, very muddled, and you have to have very good relationships with the federal regulators so that you're not stepping on each others' toes and not inadvertently offending each other. We have had that relationship and enjoy working with FERC and understand where they -- how far they can go. They, I think, are very deferential to how far we can go, but the further you go, the more you rely on FERC to have to make some of these decisions, even the unbundling of generation is requiring a FERC tariff for the unbundled generators to sell at wholesale. So, that is also a transfer from the state level to the federal level of jurisdiction that formerly used to belong to the state.

Now, of course, we're participating in what those tariffs ought to be, but that was another change that we had to make in order to be sure that we had the market that moved outside the state boundaries.

ALLISON DAVIS: Thank you.

COMMISSIONER SWINDLE: We'll take another question in the middle there.

NEIL TALBOT: Another follow-up question. Did you actually look at the question of horizontal market power and whether -- in terms of concentration in market shares, that it would be adequate, particularly in Nevada?

MS. SHELDREW: As it relates to -- well, one of the things I didn't mention, the two utilities merged, and one of the conditions of the merger was to divest their generation, but we couldn't let them divest their generation to one owner. So, essentially they are breaking the generation bundles -- generation units into various bundles, so there is going to be five or six various bundles, and we are looking at their divestiture plan to be sure that there isn't market power that can be exhibited by any one of those bundles in each of the two service territories, as well. So, that's the one area that we had to do it. Since they are not interconnected for distribution purposes, that wasn't as much of a concern. They really are two separate systems, but really the generation market causes serious, serious problems. That's why we had to go to FERC for the generation aggregation tariff, and they -- the tariffs are set up by bundles.

NEIL TALBOT: Thank you.

COMMISSIONER SWINDLE: Yes, sir or yes, ma'am.

at this point.

MR. ACKERMAN: And in response to my piece of the question, I really don't know the reasons why they elected not to participate in the market. One of them, the largest, Central Maine Power, which is now being acquired by Energy East, did make plans to enter the market with a retail affiliate and went as far as going to the Commission and getting a name actually approved. They -- there was some debate over that, and the Commission ended up allowing them to use the name Maine Power, but then sometime after that they rather abruptly cancelled plans to do that, and I don't know what the reason was.

COMMISSIONER SWINDLE: Other questions?

I have one just from a purely -- we're talking about reality and we're talking about complex things which go beyond most of us -- most of our abilities to perceive reality. How much does special interest pressure come to bear on legislators in your consideration of how you do this, and then the next question has to do with campaign finance reform?

MS. SHELDREW: Speaking facetiously for Nevada, not at all, they are only there to do the public good --

COMMISSIONER SWINDLE: You have the same kind of politician we have, right?

MS. SHELDREW: But in all reality, the political pressure brought by the utilities on this issue was tremendous. I think state commissions are up against it when they're trying to do these kinds of things to make a competitive market work, and the utilities can donate and assist campaigns clear up to the highest office in the state. I'm not a federalist at heart, but I'm suggesting that this is an uphill battle for states to handle themselves, and I think at some point the Federal Government is going to have to decide when it is their turn to get involved in this kind of an issue, because it really is very difficult at the state level.

COMMISSIONER SWINDLE: Here is an example of a very desperate woman. Have you noticed how they influence this crowd up here on the Hill? It's a tough question.

Any other comments on that?

MR. VASINGTON: I'll just say in Massachusetts it was -- on this issue, in particularly, it really didn't have much of an impact. The Legislature left it to us really to design the codes of conduct, and we've seen legislation like the one I mentioned to change how we've done it, but so far that hasn't gone anywhere.

MR. ACKERMAN: I would just add that there's also been very vigorous lobbying in Maine, but it's --

and it's also to some extent come from the new entrants, saying their side of the story.

COMMISSIONER SWINDLE: Any other questions? We have, according to my watch, one minute.

Yes, up in the corner.

PAM SILVERSTEIN: Just to take the other side of this, Commissioner Sheldrew and Mr. Ackerman, do you see any value to the idea that in the interest of the consumer having complete information, that we would want to know that this entity seeking to sell us power is the affiliate of our current electric company and that to find out -- I live here in the District, I'm a customer of PEPCO, and if some company comes to me and says, Well, we're the Sunshine Electric Power Company, and everything is all rosy, and then I find out that, in fact, that's the affiliate of the utility I've come to know and love or hate, as the case may be, isn't there a value to the transparency there so that the consumer can know I do want to do business with my utility's affiliate, or heck no, I never want to do business with their affiliate?

MS. SHELDREW: I'm very glad you brought that up, because there may have been some miscommunication on affiliation. What they could not do was call themselves, for example, Nevada Power Energy as opposed to Nevada Power Company, and use the logo. So, the third scenario that we did the mall intercept on said Ultimate Energy, and then right underneath it, it said, "an affiliate of Nevada Power Company." It told them -- it told the customer exactly -- if you want an affiliate and you like Nevada Power Energy, that's the company to go to, but what it did do is break this unconscious -- and I think very intuitive -- action on behalf of customers that if you see Nevada Power Energy Company and Nevada Power Energy Services, you think that's your energy company. I mean, that's common. So, there -- I think there's nothing -- and, in fact, in our legal research, we concluded a utility saying it's an affiliate is not misleading. It is not misleading, and they are entitled to say that they are the affiliate, but they are not necessarily entitled to deceptively use the name of the parent cnot necessar0 -t misleadFar0nichrightessa

experience was that they did speak rather freely about their affiliation in that sort of context.

MS. SHELDREW: Let me just add one thing that we at the very end of the Legislature suggested and apoplexy took over on behalf of utilities, and I think

(Applause.)

(A brief recess was taken.)

SESSION IV:

AFFILIATE RULES OR CODES OF CONDUCT

PANEL B:

ASSESSMENT OF STATE USE OF AFFILIATE RULES OR CODES OF CONDUCT

MR. MARQUIS: If you would please take your seats, we're ready to begin the next session.

Good morning. My name is Milton Marquis, and I'm with the Antitrust Division at the Department of Justice. Of course, we have concurrent jurisdiction with our fellow agency, the Federal Trade Commission, on antitrust matters, and it's my pleasure to serve as your co-moderator for today's session. Co-moderating with me is Marimichael Skubel from the Federal Trade Commission's Bureau of Competition.

The purpose of this session is to evaluate state codes of conduct. I think we had a very interesting and very enlightening discussion from the earlier panel of what some states are doing. It's very interesting, we had two New England states and we had a western state. So, I think that the type of rules that these states have enacted are fairly typical among the various states, and as I said, the earlier panel described what they're doing and it's very typical of what the states are doing.

There's a very interesting debate, interesting and contentious debate, as to whether you should have rules at hv,ei monopoly function, the monopoly affiliate, from the competitive affiliate, so that there is no incentive or ability to discriminate on behalf of the monopolist who's entering into the competitive enterprise.

Critics of this approach argue, as was argued in the earlier panel, that you lose certain economies of scope and that you decrease competition in the competitive enterprise because the monopolist may be a viable competitor and may help to increase competition or to assist competition in that competitive enterprise. So, you -- states are grappling with this issue, should they impose behavioral rules, should they impose structural remedies, and if they decide to impose the behavioral rules, what are the correct rules? How strict should they be? Who should they -- who should they cover?

So, we've asked a panel of experts to discuss the behavioral rule or rules that states have enacted thus far or are contemplating enacting, and I will ask my colleague, Marimichael Skubel, to come up and introduce the panel.

MS. SKUBEL: I'd like to commend Michael Wroblewski and others for putting this panel together. I think they are going to offer an interesting and how these codes of conduct apply.

To set the stage and also to give more time to people to filter back from coffeeing and hear the meat of what has to be said today, I am going to introduce all of the panelists at once. We are first going to hear from Peter VanDoren. Mr. VanDoren is the editor of Regulation a publication put out by The Cato Institute. Mr. VanDoren also wrote the Deregulation of the Electricity Industry, a Primer. This article talks about the advantages of vertical integration and the provision of electricity and suggests that the correct approach may be to revoke the utilities monopoly franchise. Our second speaker is Kenneth Costello. Mr. Costello is the Associate Director for the Electric and Gas Division at the National Regulatory Research Institute. Mr. Costello has conducted research and written extensively on issues relating to energy industries and public utility regulation. And has assisted numerous foreign countries and public utility commissioners tackling electricity and natural gas restructuring issues. On a more personal note and more immediate to all our concerns, I'd like to take this opportunity to thank NRRI for handling the registration and providing financial help to give us these brownies and wonderful cookies that we're all enjoying. Thank you.

Our third speaker is Dean Stanley. Dean Stanley is President and CEO of Kenergy Corp. Kenergy Corp is a nonprofit rural electric distribution cooperative providing retail electric service to over 48,000 commercial, residential and industrial customers in Kentucky.

Next, we are going to hear from Aaron Thomas. Mr. Thomas directs the legislative and regulatory relations efforts of New Energy, Inc. New Energy is a new entrant into the supply of electricity and serves primarily California, New Jersey and Pennsylvania. Mr. Thomas should provide us an interesting insight into a new entrant's perspective on the importance of codes of conduct.

Our final speaker today is Christie Day Leiser. Ms. Leiser is Senior Counsel for Conectiv, an investor-owned utility holding company serving customers in five states. Ms. Leiser was lead counsel for cases in three different states that resulted in codes of conduct governing the relationships between Conectiv's regulated utility business and its competitive affiliates. Again, she should provide an interesting perspective on the codes of conduct from the utilities perspective. I want to thank in advance all of our panelists for appearing today, and -- oh, okay. Okay, late minute update.

went through a merger in the last year, and even so, are still very small by utility standards, about $3 million in assets. We also are both a new entrant into markets as a merchant new entrant in the Pennsylvania market and also are going to be doing both the distribution, the T&D thing, and the marketing affiliate thing in all of our regulatory jurisdictions. So, we have a perspective from both sides of this issue.

So, we are in the states of New Jersey, Maryland, Virginia and Delaware as a regulated utility, and then competing in those states, as well, where the markets are open, plus in Pennsylvania, and we were formed, Conectiv is the holding company, as the result of a merger involving a utility called Delmarva Power & Light Company and Atlantic Energy, Inc. So, through all of our subsidiaries, we have over a million customers in the states I just mentioned, and we are all trading under one common brand name. Each of the affiliates uses the -- a brand name that has Conectiv in it somewhere. So, our utility operations trade under the name Conectiv Power Delivery, and then we have various trade names for our other affiliates, which include such things as telecommunications, Internet services, retail energy, HVAC, refrigeration, energy services, and we serve both the residential and the large commercial and

we're going to replace the revenue we're going to lose when we lose our generation customers.

So, as I said, we have restructuring occurring at different paces in four different states. New Jersey Energy Flow, as Commissioner Tate said yesterday, is going to start here in November. We have Delaware Large CNI starting in October and residentials next year. In Maryland, we'll start in mid-2000, and in Virginia, we'll probably have a pilot for a bit. We have about 3 percent of our customers in Virginia, so we will probably do a pilot for about 100 percent of those sometime next year. So, we are in the middle, in the thick of restructuring, and as I said, we competed in the pilots and the marketing of the -- in Pennsylvania as a marketing affiliate. So, we have been engaged on the other side of the transaction, as well.

So, right now what we are doing, we have had three of our different states so far actually address code of conduct proceedings. In Maryland and Delaware, we have final rules that we're operating under right now. They are fairly balanced in their approach in terms of trying to make sure that we are not actually engaging in anticompetitive abuses, but also don't significantly hamper us in terms of trying to engage in our own marketing efforts and don't substantially limit our ability to take advantage of economies in scope and scale in Delaware and Maryland, although the codes are slightly different in Maryland. They adopted an approach where there are two different codes, one applying to energy merchants, which is more restrictive, and then one applying to our other affiliate activities, such as HVAC, telecom and everything else, which are mainly nondiscrimination and nonpreferential treatment kinds of standards.

In Delaware, we have one code of conduct that applies to everything, all of our affiliate activities, and once again, it takes a fairly balanced and measured approach, and I have included in the materials that are behind the tab a bullet summary of the different codes in the states. In the interest of time, I'm not going to go through them all now.

In New Jersey, there are draft rules, which are not final yet, which I have to tell you makes it very difficult for us, as we are trying to train customer service personnel both on the utility side and on our marketing merchant side, trying to train people to tell them what they can and can't do in terms of customer education and separation requirements and all of those kinds of things, and as we are trying to plan advertising efforts for our marketing affiliates and all of those things, not having final rules in place when we have a market opening, sign-ups starting now, is very, very difficult.

But we are at this point voluntarily complying with a joint utility filed position in New Jersey, which would apply just to the energy merchant affiliate rather than to all affiliates, as the original New Jersey proposal would.

Okay, let me just summarize quickly by saying that the codes differ vastly between New Jersey, Maryland and Delaware in terms of the structural separation requirements, the whether or not we can use the same facilities, systems and office space with appropriate security measures in place and those kinds of things. So, as a corporate entity, it's very difficult when you're dealing with those kinds of different provisions across states to actually plan as a corporation what kind of IT investments you're going to make.

And I also want to say that when you're looking at making investments in customer care systems and all of those kinds of things, you can put appropriate, down to the field level, kind of security in place so that you're not improperly accessing information between your affiliates, but you reap significant economies of scope and scale between your utility, which helps rate payers, and your marketing affiliates, which helps consumers ultimately, and also your utility operations are going to get the advantage of innovations and investments that you're most likely not going to make if you're not doing them for your competitive enterprises. So, when you separate those systems entirely, you are I think doing a great disservice to your consumers and also to your utility rate payers who aren't going to get the benefits of some of those innovations.

Okay, so, the status of the rules today in the different states. We are still, you know, just to make things a little more complicated than what we're dealing with now. Delaware is re-opening the proceeding in light of restructuring to determine whether we need to have different standards apply to merchant affiliates than to the rest of the utility affiliates, and also is really going to take a total relook at all of the code provisions applying to all affiliates, and we will have our first filing on that in November.

Maryland Public Service Commission has also opened a new case to relook at the codes of conduct in the two different -- in that jurisdiction, for both core and noncore affiliates, and we will have hearings on that in November. And we're hoping to hear from the New

supplier was given to the distribution utility in order to serve a customer, and that information was used to actually predatorially price and take away the customer from Enron, and I tend to wear my emotions sort of all over my demeanor, and I think my mouth actually dropped when I heard that, because that's the kind of conduct that certainly should be prohibited, and, in fact, at my company, although I can't say with 100 percent certainty, there's no one in my company that would ever do that and I can't say with certainty that mistakes are never made, but as a corporate policy, that would not be tolerated at my company, because that's just an abuse that is -- should be prohibited.

So, let's talk about the kinds of things that codes of conduct should prohibit. You certainly want to protect against cross-subsidization. That is absolutely necessary, and we believe in that fully. You want to ensure that your public service obligations continue to be met. You want to make sure you continue your reliability, your safety of your utility systems to your and you also want to make sure that you're preventing the improper access to information across your affiliates, and that's information about the systems, the T&D systems, proprietary customer information and also information about the marketers themselves. That's important to make sure that you are protecting against abuses of those kinds of information.

But very importantly, codes of conduct should be to enhance competition, which is ultimately to protect consumers and benefit consumers. It is not to protect against competitors, it's not to prevent or protect competitors themselves, and many of the safeguards that are being put in place actually protect competitors, decrease efficiencies and ultimately hurt consumers rather than enhancing competition.

We believe and we abide by a system where accounting separation is in place, functional separation is in place. We have the behavioral safeguards to ensure that we're not doing improper steering, improper tying and sharing of information. And we believe these things are more than enough to prevent anticompetitive abuses, which I think Commissioner Vasington referred to as true anticompetitive conduct rather than artificial competitive advantages.

Legitimate competitive advantages should be encouraged, and they actually benefit consumers in the end.

And another point to make here, I think, is Mr. Ackerman from Maine actually made the point that code of conduct in place will encourage vigorous competition, and I -- and I believe that that's true to the extent that you have properly thought out and focused codes of conduct which protect against the things I've just discussed.

Far more important, though, to a competitive environment in my opinion and based on our experience as a new entrant into the Pennsylvania market is ensuring that there is enough room in the shopping credit or however you determine what your savings are going to be that you have room for marketers to be able to make some money and be able to show customers savings over the default service rate of your utility. If you don't have that, I don't care what kind of code of conduct standards you put in place or what else you do, you are not going to have competition, because marketers aren't going to come into your market.

And then one other point I wanted to make quickly, which is not necessarily relevant to codes of conduct, but I think it's very relevant for purposes of this workshop, which does have consumer protections in the title and its effect on competition, is that there are certain consumer protection requirements that are being put in place in states which I believe have the effect of chilling competition, and they have a noble reasoning and cause and justification behind them, but let me just give you a couple of examples of that.

In some of the states, we have wet signature requirements, which require the customer to write a signature and send it in, both for, for instance, for the sign-up and for renewals, so that you increase your acquisition cost to your marketers trying to come into the market. You don't have a verification procedure like third-party verification, and the reason for this, of course, is to prevent slamming, which is certainly a legitimate and valid justification; however, there are othighdhey23w25ldatheandavrais;bwbisavewestermilyha yve a nobl signatures, for instance, have kept GreenMountain Power, which is one of the sole people other than Conectiv that we know of that are supplying green energy to residential customers. They are not coming into New Jersey because of the wet signature requirement. They have made that announcement. So, that's one thing we need to keep in mind in terms of chilling competition.

Another is mandated disclosures and contracts and things. We've talked about one of the things that's going to be most beneficial to competition is innovation, and when you have things that require, for instance, that you compare a kilowatt per hour price to the utility's kilowatt per hour price, that chills innovation, because if people want to bundle different types of offers of different kinds where it's not susceptible to a kilowatt per hour price comparison, you are, in fact, chilling innovation by doing those things. So, those are just a couple of examples I wanted to give in terms of enhancing competition that we have to bear in mind in terms of this workshop in addition to codes of conduct.

I think that completes my remarks.

(Applause.)

MR. VANDOREN: My function here is to transform you through a Star Trek kind of transporter and make believe you're not at Georgetown, but you're at the University of Chicago. We're not in a law school, but we're in an economics department, in particular the Economics Department of the University of Chicago.

Speaking before you, I know how people feel when they come to Cato. This is sort of, I guess, payback time, because probably I'm in a strange audience here, because my guess is most of you didn't take economics at the University of Chicago.

Regulation got us here in the first place. Why are we so convinced that regulation will get us out? Regulation gave us the high cost nuclear and the high cost PERPA contracts that then led companies to argue they ought to flee Massachusetts and California, which then led them to try to bargain for a gain, which then led the Nader types to worry that individual consumers wouldn't get in on it, which then led to what we're now calling restructuring, which then led to conferences like this where we're all worrying about how to make sure it works out all right.

The world would be a lot better off if we all went home and did something productive rather than be here and worry about whether it's going to work out all right, because it looks like in the pocsbwsuresre nd

now instead of a monopoly. The PEPCO, the electric utility, is going to, in effect, be a rival to Montgomery County cable through a subsidiary that if you read the paper you can figure out it's a subsidiary, all right.

Well, if cable was a natural monopoly, then how come there can be a duopoly, right? If you read your econ textbooks, natural monopolies are firms, given demand in society, such that the lowest costs are provided by one firm rather than two. If we have two firms, we will have greater costs. Well, both can't be true. Either Montgomery County Cable wasn't a natural monopoly or we're going to have higher costs with a duopoly than we will with a monopoly. Both can't be true at the same time.

This happened in The Washington Post. Nobody wrote an op-ed, nobody wrote an article, nobody said, Oh, wow, if this is true, then all these other things can't be true that we're also told.

Two, John Kwoka book, Power Structure, you ought to read it. It has nice data on the 12 cities in the United States where there is duopoly competition, where customers can choose between rival vertically integrated utilities. Guess what? They have higher fixed costs. The so-called waste that people with an engineering background worry about, but they have lower total costs, because the marginal costs are lower because they have rivalry, and they can't have people going to conferences all the time that they have to pay for in their overhead, okay?

Third, why should we presume that mandatory open access to a T&D network that was designed under regulation is optimal, right? Why -- who says the T&D network is optimal? It's not. Transmission and distribution are complements to generation and substitutes to generation. You can either build a power plant in Wyoming, build a big hunk of capital to ship the power to Minneapolis, or you could build little co-gens in Minneapolis and skip the T&D, right?

You can -- unless we have price discovery in open markets, you can't figure out whether or not the existing T&D network is, in fact, optimal. So, having something called competitive generation that we then glue onto a T&D network that looks as if it were designed in France, why are -- why do we think that that's going to be optimal? It's not going to be optimal. I don't know what is going to be optimal, but it's not going to be what we're doing now.

Cross-subsidy. I hate that word. If you were in my class, all of you would get Fs. Cross-subsidies

-- I hear -- every conference I go to where lawyers dominate, they talk about cross-subsidies. Cross-subsidies refer to marginal costs, not overhead, not fix costs, not all this wealth transfer -- well, I won't say what I was going to say -- wealth transfer stuff that all of you folks worry about. I don't know why you worry about it. I don't. It has nothing to do with economics, all right?

It's a wealth fight that you're a participant in refereeing, but it's not clear that that makes society better off, right? Let the companies worry about it. Let the rivalry decide which kind of fixed costs are more expensive and which aren't.

If I were to get you to read three things in my class, I'd have you read the following: One, Coase's Theory of the Firm, 1937. He said, what things take place in markets and what things take place within the firm? Answer: Things take place within the firm for which it's too difficult to write contracts that prevent opportunism, et cetera, et cetera, et cetera. He wrote it in 1937. Not enough of us have read that.

Make believe we were talking about supermarkets, the way we're talking about electric utilities. There were worries in the 1920s about -- about butchers and bakers and candle stick makers and all that. So, states enacted laws that tried to make sure supermarkets didn't somehow interfere with what was going on with the way retail markets were organized at that time. If I had to use the transfer pricing rules, et cetera, et cetera, that all you folks are talking about today, I'd have to go to Giant or Safeway here in the Washington area, I'd have to then make sure that the meat market part of Safeway had the right way to transfer price to the cashier part of Safeway, which then had the right part to transfer -- you know, et cetera, et cetera, et cetera.

This is nonsense. It's nonsense. And some of us ought to have the integrity to realize that if we had thought this way about supermarkets, we'd never have them. We would never have them. Coase's Theory of the Firm.

Second reading, Posner's Natural Monopoly and Its Regulation. The first article he ever wrote, 1969, Stanford Law Review. He was much younger than all of us here. CATO has reprinted it this year as a book, and so there is no excuse for saying I can't go to the library and can't get it. It's now a book, and I would urge you to read it. He wrote a new forward to this book, and he argues in it that in 1969, the book was heretical. In 1999, the book is still sort of heretical, but he takes on the most difficult cases. What about things that are natural monopolies? Do we really need to regulate them? And he said, ethically, they get rents, okay, so what? So do owners of natural resources. It's no different, right? And natural monopolies are natural. The people aren't evil that own them. It's just because of the nature of the costs in the markets, four firms have higher costs than one firm.

Are T&D a natural monopoly? I actually don't think so. I don't think so. I'm not saying we would have six firms, but I think we would have three or four certainly in urban areas. In rural areas I'm not as sure, but I think we would have much more distributed and decentralized generation in rural areas.

Finally, I'm very scared that we're going down the telecom route in electricity, and if any of you think the 1996 telecom route is a road we want to go down, I don't think so. Let me read to you what Robert Crandell has recently written about this. The experience with mandatory open access in telecommunications suggests that forced regulatory access to bottleneck infrastructure is a policy disaster that results in extensive litigation.

Requiring that incumbent providers of telecommunication networks provide access has created incentives for firms not to invest in new facilities and instead seek access to current facilities that may not even be optimal, because they were created by regulation rather than market forces. And I quote here, "There is no limit to the ideas that I may have for using your property at prices that are as low as I could obtain by building those facilities myself."

I.e., an efficient component pricing rule leads to full employment for consultants and litigators, et cetera, et cetera, et cetera. So, I think if we read Crandal correctly, he could be belly aching that he's not getting $600 an hour for being part of this consulting racket that is going around with the efficient component pricing rule. On the other hand, I think he has an intellectual point to make.

And with that, I'll stop.

(Applause.)

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Actually, I attended the University of Chicago Economics Department for two years, so -- but the perspective of -- and I essentially agree pretty much with what Peter has talked about. I come from a little different perspective, and my views are only my views and not those of the National Regulatory Research Institute.

The purpose of my presentation here is to -- and I call them observations, basically to stimulate some discussion on this panel and maybe more importantly raise some issues and questions that I believe should be addressed at the policy level concerning codes of conduct or what I call affiliate rules.

I'm not going to provide any answers certainly. If one wants answers from me, they are probably going to have to pay something if they desire to do that, but I'll raise some questions. I'm an economist, someone who can sort of stand back from the trees, look at the forest, look at some of the issues and as an economist, of course, have my own distorted views.

Certainly those around the field looking at sort of the debate over codes of conduct, it's quite lively. Certainly interest groups are trying, in my opinion, to exploit the political regulatory process to gain favorable treatment. As economists, we call it rent seeking costs. The regulators are in the middle. Basically they are getting different information from different groups, and they have to make decisions which supposedly in the public interests, and most times it's very difficult for them to do so.

And certainly we look at the policy questions with regard to affiliate rules, there are many. Why have them? What's the objective? I hear different objectives, for example, protecting consumers from market abuses. I find that a little disturbing, because that could result in too much adversity, risk adversity. I mean, if you're trying to protect consumers from possible, potential market abuses, then there's a lot you're going to prohibit that should not be prohibited, and that is going to be contrary to the interests of consumers.

I would say the objectives should be to promote the long-term interests of consumers.

What should they prevent? Certainly I think yesterday there was a lot of discussion, somewhat today, about sort of counteracting the incumbent or the power of the incumbent. Certainly that seems to be predominant in the structure of affiliate rules. And certainly there's two schools of thought on this, and the one that sort of is prevailing up to now, not only at this workshop but at the state level, is that utilities have certain of encompassed -- sort of power, because of their position as being long-time providers of utility services, and therefore, the implication of that is then you should jump-start entry by new competitors. That's the implication of that.

The other school of thought is sort of taken by utilities, but some academics, too, is that we start opening these markets and it's going to take some time for entry, for successful entry, by new participants. I mean, look at other markets, unregulated markets, where if you're going to try to get into the business of -- of selling athletic shoes or other types of products or computer business, certainly, the debate -- the antitrust debates, you know, a company selling software have to compete with Microsoft, and the position is it's going to take some time. Other companies are going to have to come in there, advertise, promote their service and try to overtake or at least gain some of the market share now being enjoyed by Microsoft. So, those are sort of two schools of thought, and they have different policy implications.

And then there's sort of the question -- and this sort of started I guess with the Chicago School bacmcomteir ith dhknow, aauf thought, and they haipeir s translate into lower consumer welfare? And there's a whole literature on industrial organization, there's a lot of evidence, and actually court cases which have shown that you could actually have less competition and consumers would be better off. I'm not going to get into that, but certainly I think that's relevant in the debate over codes of conduct.

And then there's a question of more effective mechanisms to mitigate anticompetitive behavior. Certainly that's sort of evident in the discussion. You know, should we go to divestiture? Is that where we have to go right away in order to make sure there's no anticompetitive abuses? You know, and incentives, something I want to talk to you about later, some of these incentives, like for cost shifting and cross-subsidization -- sorry, Peter -- and other sorts of supposedly anticompetitive activities can't be reduced significantly through what I call price cap regulation or incentive-based price regulation. It's one of the reasons why we're concerned about affiliate transactions and potential affiliate abuses, is because -- not only because utilities have monopoly power with regard to essential services, but also -- and perhaps just as importantly -- they have incentives on their cost of service regulation to engage in some of these activities, which certainly firms in unregulated markets not only aren't able to do, but they don't -- really, they don't have the incentives to engage in those things. And that's sort of a policy implication, instead of having rules, maybe better incentives to mitigate against some of these problems.

And I think then the challenge for regulators is to protect retail consumers perhaps against the possible exercise of market power by a utility and its affiliate without giving up significant efficiency gains that could otherwise benefit consumers. I think that's Alfred Kahn's sort of argument and the argument of a lot of economists, sure, I mean, if you want to avoid all automobile accidents, if you want -- if as a social objective we want to minimize fatalities from all of the automobile driving, I mean, the best way to do that -- I mean, one way of doing that is to prevent people from driving.

Certainly as a social policy that's draconian and highly repulsive to most of us.

Some other observations, there's a lot of activity -- when we talk about transferring logos, cost shifting, sharing resources, and there's a lot of disagreement over whether those are anticompetitive or pro-competitive. Again, sort of referring to the

Microsoft case, there's -- and certainly the essence of that case, because a lot of the activities engaged in by Microsoft, the question of whether they are anticompetitive or pro-competitive, and I think this morning there was a little bit of discussion in the previous panel over sharing logos, whether that's actually anticompetitive or pro-competitive, and that's -- I feel like that's sort of the other aspects of affiliate rules, that seems to crop out as a -- as a real issue.

Affiliate rules, the biggest sort of benefit is they're up front, they reduce uncertainty certainly to the actors and utilities and affiliates, you know, what's legal and what's not, what they can and what they cannot do. And certainly if you're going to have to rely on antitrust legislation after the fact, there could be high social costs, and I think everyone sort of agrees with that, that the antitrust certainly laws aren't adequate to deal with these issues.

The problems, then, some of the problems with affiliate rules is that, of course, oversight enforcement costs. I think the FTC, perhaps the DOJ, other agencies and the columnists would say, well, you've got rules, utilities, especially under cost of service regulations, utilities have incentives to break the rules, they're hard to detect. So, to be able to monitor these rules and enforce them requires I would consider considerable cost by the regulatory agency to make sure that abuses aren't occurring.

There's also the sort of social cost of going too far, again sort of use the Alfred Kahn's sort of argument that you can't have rules which are too restrictive which could prevent activities that could be beneficial to consumers. Certainly some of the efficiencies that could result from scope of economies, for example, could be foregone and consumers could be hurt by that.

And then there's the argument that if your rules are really restricted, then it could encourage excessively entry of new competitors, and there's danger of that.

Areas of disagreement, certainly I think -- I'm sort of observing out in the field that the regulators are more concerned about market abuses than by losses of scope economies so they tend, in my opinion, to hedge against market abuses. Perhaps there's a regulatory failure there. Perhaps they're going too far in preventing scope economies and other economies in their rules that would otherwise benefit consumers, sort of interesting academic question in terms of whether it is a market failure.

Definitions. One of the problems I see is definitions. They need to be -- there needs to be a consensus agreement on definitions, you know, what's cross-subsidies, what's cost shifting, what's fear competition, different definitions, what's true, you know, legitimate barrier to entry? A lot of things are supposedly barriers that aren't really barriers to entry, which could result in this shift by policy makers to try to correct for that.

So, I think, we have to sort of get back to basics, in my opinion, to address these basic terms and at least have some sort of consensus in these -- in these terms. As a -- sort of a last point is sort of using the antitrust jargon, should affiliate rules apply a rule of reason or per se test, kind of interesting. Maybe I'll I'm making more of it than it should be, So the question is when you look at the different rules, what should be in the components of the rules, what should be sort of the generalized sort of response? I mean, as a per se one, one could say, you know, local sharing is bad. Now it's up -- the burden of proof is on the -- let's say the utility side to show that sharing of logos can be good for consumers, okay? That's sort of a -- I guess one would call a truncated rule of -- actually, it's a truncated rule of reason test. So per se -- I should say a per se test would be to prohibit all, you know, logo sharing, you know, prohibit -- prohibit integration of resources, prohibit certain things under all circumstances it's bad. The point is is that a good test, the sort of type of test to use? As an alternative one could use sort of a cost benefit test, like the economists sort of favor that, saying, okay, logo sharing or structural separation? There's benefits and costs. Let's look at the benefits and cost, add it up and see, you know, wnderpFduas u?

(Applause.)

MR. STANLEY: Good morning. It is my pleasure to be a panelist this morning and speak to you about this important subject on behalf of Rural Electric Cooperatives, and I doubt in your conference that you've heard the term Rural Electric Cooperatives, if at all, certainly not very often. The company that I'm employed by, Kenergy Corporation, is a new entity. We were formed July the 1st, 1999 through the consolidation of two cooperatives, Springover Electric Corporation and Henderson Union Electric Cooperative. These two cooperatives were formed in the late 1930s, and they were organized for the purpose of bringing electric service to farms, residences and businesses in this rural area of Kentucky and to promote economic prosperity.

I'm also here today on behalf of the National Rural Electric Cooperative Association and the Kentucky Association of Electric Cooperatives. NRECA is a nonprofit national trade association of approximately 1000 rural electric cooperatives, including our state association and its 27 cooperatives.

My purpose will be to give a rural electric perspective on the codes of conduct, as well as offer a few comments from the perspective of my own cooperative.

In Kentucky, we have yet to adopt rules relative to cost allocation and codes of conduct, so my perspective will be simply to discuss with you the activity that we have had so far, which is to have a formal proceeding drawn and to have had some preliminary hearings in that respect.

In Kentucky, cooperatives are regulated entities, with the exception of those that are TDA-supplied cooperatives, and our municipals in the state of Kentucky are not regulated. I brought with me and will file as part of the prepared statement a response to the Kentucky Commission's order number 369 on behalf of our national and state associations.

My prepared statement and our filing in the Kentucky proceedings touch in some depth on many of the issues under examination here today. If today I could make one and only one point to this audience, it would be that to have you to understand the unique characteristics of electric cooperatives within the electric utility industry and the importance of those differences as regulators set forth rules for a competitive energy market.

Some of the more salient points that I would trust that you would consider are, number one, that we are member-owned and democratically controlled, that's unlike investor-owned utilities that are stock-held and municipals, excuse me, that are owned by local governments. Our customers own their electric utility. We are a nonprofit organizations compared to for-profit, stock-held corporations. We typically are very small in terms of customers as well as numbers of employees. Cooperatives average less than 10,000 customers and less than 60 employees. That in contrast to what you've heard of utilities that average over 300,000 customers and 2000 employees.

Our customer density per mile of line is less than six. Compare that to investor-owneds that average 35 and municipals that average 48 customers per mile. Our plant investment and cost of operation is higher, because we serve sparsely populated, rural areas, and our revenue is lower. Our customers often do not have adequate nonutility services available to them, as would be commonplace in the more populated, urban areas. Much of our service area is populated by the rural port. It is often an undesirable place for those who seek profit to try to provide services.

These are the significant and the critical differences that states should consider when they look at imposing codes of conduct. We differ, again, from the larger utilities, and we believe that utility commissions should consider those as they look at codes of conduct and that they are tailoring rules to achieve certain legitimate goals, and we would hope that they would not utilize a one size fits all or a cookie cutter approach.

A code of conduct that is overly prescriptive or that applies equally to all market participants, regardless of their size or ownership, will in practice reduce competition, increase costs for customers and reduce innovation in the marketplace. We firmly believe that customer ownership and size difference must be taken into account in any federal or state proposal related to affiliate transactions, both to deter anticompetitive conduct on the part of larger utilities, as well as protect smaller entities from inapplicable, burdensome requirements.

Although Kentucky has yet to promulgate regulatory language or a code of conduct, electric cooperatives in Kentucky are prohibited from subsidizing nonelectric operations with electric revenues. Likewise and contrary to our critics' arguments, we are prohibited from using USDA rural utility services loan funds for our diversified business activities.

I should also emphasize that cooperative experience with affiliate transactions or diversified business in our state is quite limited. For instance, we have fewer than a half a dozen cooperatives state-wide involved in any kind of propane gas operations. We have others, including my own company, with limited entry into residential home security, sale of telecommunications equipment, providing Internet and other kinds of value-added services.

During the informal proceedings at the Kentucky Commission, the Commission itself expressly asked whether separate rules should be developed for different entities, and it was suggested more than once by various parties that perhaps separate rules and regulations may be in order for electric cooperatives as compared to those of the larger investor-owned utilities.

Our very nature of being nonprofit and consumer-owned brings different issues to the table. Many would find these issues easier to handle when done in a framework distinctly separate from that with provisions relating to investor-own utilities.

Most cooperatives simply aren't large enough to have formal holding companies, have their operations in entirely separate buildings or completely draw a hard line of separation in their operating structures. Our size makes that extremely difficult to accomplish.

The enormous burden of strict separation of functions requirements could well make it impossible for many cooperatives to provide competitive services at affordable and competitive prices, yet to exclude us from those markets and particularly in the sparsely populated and poorly served areas, could lessen competition, lead to higher prices, and reduce innovation.

If we were to -- if we were required to spin these competitive services off into separate affiliate and separate employees, separate offices, separate computers, separate records, it would eliminate the efficiencies we gain in providing those services together. It would dramatically increase our costs and overhead, and it would deny customers the convenience of being able to shop for those services in a single place.

Existing monopoly providers of electric service may possess certain market advantages in their regulated activities i70-soe 7   Existi 0 - foclat-22isti 0 - Wu0 -Elrt-2s

Existing competitors do have the advantage of years of experience in the marketplace. Many times in a rural area, the marketplace is virtually void of service providers, since they have deemed that entry into that particular location is not profitable.

Kentucky's cooperatives have become involved in diversified businesses primarily out of the need and a desire of our customers that we offer those services, and we have sponsored state-wide research relating to our customers' interests in our entering these markets, and we have found that our customers support us being involved in those diversified businesses by a large majority. It is, therefore, in our view a -- an interest that our customers wish for us to pursue.

The final point that I would like to make is that the electric utility industry restructuring and related issues, such as codes of conduct and cost allocation at the state level, are best handled within the same time frame. Matters pertaining to codes of conduct are best left to be finalized only at such a time as when we know the basic structure of our industry and how it will be shaped. It makes little sense to us to enact rules or laws pertaining to a code of conduct until utility restructuring issues have been resolved.

We are undergoing that in the state of Kentucky today. Our state is a low cost state, and we will be dealing with those issues, and we will be dealing with codes of conduct. And again, I am hopeful that our state will recognize the unique differences that rural electric cooperatives offer within this electric utility market.

I thank you for the opportunity to share these remarks with you.

(Applause.)

MR. THOMAS: Hello. My name is Aaron Thomas. I am the Manager of Regulatory and Legislative Relations for New Energy. We are corporately located in Los Angeles, California with offices in Boston, New York, Texas, Arizona, primarily serving commercial and industrial customers as an energy service provider and new market entrant, as well in the markets like California, Pennsylvania and New York, and certainly eagerly anticipating a number of markets that are opening in the near future.

I was very eager to address the subject of the importance of affiliate rules and codes of conduct from a new market entrant's perspective when asked to present here today. And I'd like to associate myself with a couple of the comments made by Mr. Kenneth Costello, and that being his concept of getting back to basics and that the -- that the driving force here ought to be to promote the long-term interests of consumers.

All too often, in regulatory debates on various issues related to restructuring, we tend not to square off on the fundamental policy issues that are at play, and the debate continues to be waged upon the details of the particular issue, and this has happened time and time again, for example, with affiliate rules. Rather than focusing on the central policy objective, the long-term interests of consumers, we tend to let this debate over economies of scale and the utility's use of those through the affiliate wage against the concerns of new market entrants regarding anticompetitive, cost-sharing and nondiscrimination concerns.

Rather than deciding on the front end that our central objective -- and what I'm here to say is I think the key central objective that we need to go into this is that the principal that should govern and drive the government in building affiliate rules of conduct is building a market structure that can provide a vibrant retail competition, and let me define vibrant. That doesn't mean hundreds of competitors necessarily. It does mean that competitors come into the market on an equal footing, both against the incumbent utility, in the form of what we'll call de facto competition with the default service, as well as with the utility's affiliate.

Once we establish that as our primary objective, the more near-term goals of establishing affiliate rules and codes of conduct, we have heard again and again, and that is to protect against the erection of barriers vis-a-vis cost advantages or information advantages that are conferred to affiliates; or -- well, and also that we protect consumers against rate payer subsidization of the affiliate. And again, I'd like to reference back to one of the earlier comments made -- or rather a comment made by a Commissioner Wood in the Texas Commission or rather the Texas Public Utilities Commission as it relates to how we unfolded our process in California. He noted in January of 1998 that California was really a bit late to the debate on establishing its rules, as we really established them sort of on the eve of the new market, and it's been noted that our rules have been some of the stronger rules that have come out.

The -- one of the driving forces in ours unfortunately wasn't that we adequately answered the policy questions but was, rather, that we had ample evidence of utility abuses already occurring in the marketplace that drove a lot of the decisions that led to our affiliate rules and codes of conduct.

So, I hold that if you apply that principle to the basic process of developing these rules, when you inherited from the old regulatory environment or the old monopoly franchise.

As I talk through this a little bit, I'd like to lace in some of those examples of problems that we saw occur and instances where the rules have come into play in California. One of the issues as it related to the subject of how broadly do you define the term "affiliate," and in California we included both the holding company and all energy-related services. One of the key, what I'll say driving forces in that direction was prior to the establishment of our rules in California, we had a gas utility who was actively marketing earthquake shut-off valves, and the active marketing was taking place with the use of the SoCal logo that tended to confer certification of these earthquake valves offered through an unregulated affiliate and uniquely positioned them in the market.

Likewise, active participation of HVAC small contractors in the debate helped to elucidate the advantages that can be conferred just simply by the name and logo and association with the parent utility in relation to how consumers make choice and evaluate products. That ultimately led to the establishment of a broader definition in California.

On information-sharing and nondiscrimination provisions, again, we had, you know, the good and the bad. Yes, our rules came late in our process, on the eve of the opening of our market, but at the same time, we had what was a good year prior to the passage of our restructuring legislation to reflect on some prior abuses of the utilities.

Specifically, you had utilities openly engaged in discouraging customers from considering their competitive options. They were withholding usage information from ESPs. They were communicating misinformation about the market relative to ESPs. They were providing preferential treatment to their affiliates in the exchange of market information, specifically as it related to business development leads. Even went so far as to include the affiliate in some marketing activities.

All of these led to very strict, delineated information-sharing and nondiscrimination provisions in our code of conduct.

I'd like to remark and bring that forward to where we are today. The establishment of those rules has made itself very clear to the efficacy of them. Recently, one of our utilities in California filed an application which was required under the affiliate rules if you intend to offer any tariffed or nontariffed services through regulated assets. They were filing an application to establish what I'll call third-party telemarketing services through their customer call center for new customer sign-ups. So, a customer calls in to sign up for service, new to the service territory. Information is conferred as to location, address, name, credit. After that, the telemarketing service begins where the utility is requesting authority to sell to third-party telemarketers the ability to offer newspaper service, Internet service, as well as home security service for wiring.

Now, is that use of rate payer assets a bad thing in and of itself? No. Is the fact that this is going to be open to anybody in the market through a competitive bid process to secure access to this telemarketing opportunity within the utility rate base? Yes, that's a good thing. The reason why it's open is because of our affiliate rules in California. Had we not defined strict parameters on what could and could not be offered by the utility vis-a-vis what it would be available to offer its affiliate, this particular utility could have offered directly to its unregulated affiliate the opportunity to telemarket these services without having offered it to the rest of the market on a nondiscriminatory basis, and, in fact, one of the programs that's laced in this application existed prior to the rules, and it's a home wiring security service that's offered by an unregulated affiliate.

I've heard rumors that the program, I hate to engage in rumor spreading, but I think it provides an interesting perspective here, that having this offered through the direct link of the utility when they call for service increases the effectiveness of the program by threefold relative to just straight telemarketing. Again, not a bad thing on its face, but it should be a service that's open to all on a nondiscriminatory basis.

I've gotten my three-minute warning, so I'm trying to wind it in.

We advocate strong reliance on functional separation rather than using cost accounting methodologies to delineate activities between the utility and the affiliate. As to transfer pricing standards, Christie Leiser pointed out a good thing in remarks about the Pennsylvania market and the importance of the shopping credit relative to the overall market structure, and I'd like to jump on that a bit and say, we find ourselves in this interesting debate of economies of scale that should be provided to the affiliate so that presumably the affiliate can establish what will be the competitive benchmark for other market competitors to come in and compete against, and that that is, quote good unquote for consumers, and meanwhile we have this back-out rate or we also have the default service provided by the monopoly wires company, which also, in essence, is what ESPs are in de facto competition with, and we have advocates there on issues of procurement costs, revenue cycle service cost, advocating for a marginal or incremental cost separation there, creating this -- if you just step back and look at it, this situation where the back-out rate is set at avoided costs with little, if any, retail costs associated with it. New market entrants come into the market to compete against what is we'll call a difficult shopping credit to make a business upon, and the only other entity in the market that functions without the back room costs that a new market entrant would have is the utility affiliate that might seek advantages through transfers of services and information from the utility.

I don't think that's the right structure to approach it from, and again, I reference Commissioner Sheldrew's comments that if you functionalize what you're trying to create and approach it from a central principle of establishing a vibrant retail competitive market, you will look to put the affiliates on an equal footing with all other competitors in the market. We've done that in California. In fact, we have a very successful affiliate. Pacific Gas and Electric Services is the largest -- one of the top three commercial/industrial providers in California, if not the largest. The rules can be strong and good for the market and still provide the affiliates the opportunity to compete in the marketplace.

Thank you for your comments, and I look forward to questions.

(Applause.)

MS. SKUBEL: We would ask that when you're asking questions, if you could identify yourself and your organization, it would be helpful.

MR. MARQUIS: Do we have any questions from the audience?

NEW SPEAKER: Somebody from the Department of Energy, I have a question for Ms. Leiser. How does the effect of the R&D effort --

MS. LEISER: Research and development? Let me start by saying that the way we've approached R&D and advertising and branding costs and everything else thus far has been 100 percent below the line, which means none of the costs have been subsidized in rates in any way. That's not to say that we have done it corporate

-- as a corporate -- from a corporate entity standpoint separately. In other words, Delmarva Power & Light Company is one of our regulated utilities, which has retained earnings that it can use on a discretionary basis, and so we have made some investments from retained earnings in R&D efforts and in advertising, but none of that has gone into the rate calculus or been subsidized in rates in any way.

Having said that, I do believe that as a policy matter, utilities should not be prevented from joint R&D investments, as long as the costs are allocated appropriately among the entities, because I think, once again, that stifles innovation and ultimately is bad for the consumer.

MR. MARQUIS: Is there a question?

MR. MORRISON: It seems that the code of conduct -- Jay Morrison, NRECA. Codes of conduct are being used to protect not only the electricity market that's starting out but also markets in all of these other areas that are already open. When I called to join a music club, I first had to listen to advertisements for a half a dozen services which I presumed were affiliates of the music club.

If an electric utility, for some reason, wanted to go into music sales, why would they be treated differently or is there a reason to treat them differently than that music club which already has these other affiliates and is able to advertise together without regulation?

Do you understand the -- and this is directed to Mr. Thomas, talking about the call center.

MR. THOMAS: Right. Well, thinking about specifically the affiliate question here that was offering not a record buying or CD buying deal or some other nonenergy-related subject matter, it was for home wiring insurance, and the customer calls up and receives, you know, he is calling the utility operating excess call center capacity that any entity may bid on. In fact, the LA Times will likely be another entity that will seek to bid on that. And it makes sense when you call up for service, there are some basic functions that you're seeking. So, I'm not opposed -- we're not opposed -- to those offerings being made, but done in a manner that -- go on.

MR. MORRISON: If I can just push the question one step further, if it's okay for them to offer the other products, so long as it's open to others to also bid in to have their products offered, should the same be true of the music club? The music club is selling the same services as the utility. Should they also be required to offer others the right to sell? So, for example, if the utility and the music club are both selling magazines, books, records, whatever, should the music club also have to offer their call center to everybody else? Why is the utility being treated here differently than the company into whose industry the utility is trying to be a new entrant?

MR. THOMAS: I see. So, the question is why should they be required to provide equal access to these facilities? Is that the question?

MR. MORRISON: Why should the utility be subject to different regulation when it enters into an already competitive industry than other participants in that already competitive industry?

MR. THOMAS: Okay, well, it -- we were trying to operate from this specific case example. I'm not sure that home insurance for internal wiring is an established competitive industry, as you might make a relation to the record industry. And I think there are unique differences between -- very distinct industries, where here we're talking about both electric services and the ease of associating these services with one entity. Again, the utility is not required to provide these services. They are requesting to sell excess capacity in their telemarketing -- or rather, in their call center, which is a regulated asset, part of their revenue requirement, covered through distribution rates.

MS. LEISER: Using your example, how about the part of it for the security monitoring? You would say that that's fully competitive, right?

MR. THOMAS: Home security monitoring is a fully

MR. THOMAS: That's part -- that's one of the services that will -- that's underpinning this application in that that they are seeking to have their affiliate bid into provide these services through the telemarketing and call center. Would I say that's a competitive service? Yeah, I'd say that's a competitive service.

MS. LEISER: So, does a different analysis apply?

MR. THOMAS: Does a different analysis apply because it's related to energy?

MS. LEISER: No, because it's fully competitive.

MR. THOMAS: I don't know if it's fully competitive. I don't know if there are many --

MR. MARQUIS: Okay, I think we can have another question. I think I saw a hand over there.

MR. KELLY: John Kelly, American Public Power Association. This is a question for Mr. VanDoren, two short questions. He seems to suggest that the market -- that there should be little or no government regulation in the electric utility markets and economic threats are okay. Is there any time limit that you would put on for these markets to adjust to reduce the economic rents, could we wait five years, ten years, fifteen years?

That's question number one.

Question number two, you referred to the book by Professor Quota and his result on two competitors in distribution service. One of professor -- another one of Professor Kwoka's major findings was that public enterprises, specifically municipal electric utilities, were legitimate and effective competitors in the industry. It seems that if you're on the favor of government intervention, would you also embrace Professor Quota's finding among municipal enterprises?

MR. VANDOREN: The -- on the notion of how long a transition should be, there's no answer. There's no academic answer. There's no theorems I can point to that say it should be this long or that long. I think Bob Crandal's point was simply that the key to transition is entrepreneurial rivalry, and right now in telecom and electricity, all the entrepreneurial rivalry is focused on conferences like this where we're fussing about rules as opposed to just going out there and doing something, and Bob Crandal's point was set an arbitrary time, like say five years from now, when we're not going -- the regulators aren't going to be around anymore and you guys have got to figure out how to make money on your own without massaging the regulatory process, which is certainly the academic literature suggests that the

they were -- they were effective competitors and that only about a third -- less than a third of the difference in the price between private companies and public enterprises was due to taxes, high cost of capital, those things. That was the specific point I was referring to.

MR. VANDOREN: Right. I don't disagree with what he said, that is, the argument that the advantages of public power have would all disappear if federal and state local subsidies would disappear. That's not -- I agree with you that his book argues that that's not the case, that public power seems to have an orientation towards customers that may provide them with some unique advantages.

MR. MARQUIS: Commissioner?

MR. GLAZER: Craig Glazer from Ohio. I want to go back to the call center question again, because this is a -- really is an issue that we get very tripped up on, but I'm not sure I'm understanding what the recommendation is that you'd have the commissions do on this issue. If it's bidding it out to the highest bidder, I'm not sure if that particularly solves the problem, because I could see somebody coming back and saying, Well, the affiliate won the bid, so the affiliate is paying the IOU, but it all is one big company, and so there's a cross-subsidy, if you will, at that point, and I'm wondering, is it the bigger question the fact that it's a bottleneck entry point, that you have to call the utility for a new service, and I'm wondering if a solution might not be to allow a new customer to call anybody for new service and that customers takes it up with the IOU. So, I'm wondering what exactly you would have the commissions do, and I would like to hear from the other panel members. The call center is a big issue that we end up dealing with.

MR. MARQUIS: Before you answer the question, we are going to go for another three to four more minutes, so I'll ask you to make your comments brief.

third-party telemarketers that would use the call center.

The rules require that tariffed services be available to all. In this instance, because they can't make it available to all, because it's a finite resource, that's the cause for having to confine this to an RFP process.

As to pricing and the affiliate, what they'd be willing to pay back to the regulated entity, the affiliate rules again here require that goods and services from affiliates to the utility will be priced at not more than fair market value, and you have vice versa in the other direction.

MR. MARQUIS: Did anyone else want to address the call center? You don't have to.

MR. COSTELLO: Well, maybe I shouldn't. I'm sort of daydreaming here.

Sort of as a matter of principle, if the call center is considered an essential facility, then I think one could make an argument it should be offered to not only the affiliate, but to competitors of the affiliates, if it's truly an essential facility, which is expensive to replicate and for which the nonaffiliates need to get into a business, but it would have to be in my mind a utility-essential facility, like

-- you know, a transmission/distribution, perhaps. If it's not, then I don't think a rule should require that the -- that that particular service should be offered to the -- to the nonaffiliates.

MR. MARQUIS: We will do two more quick questions, because I saw a hand.

MS. LEISER: I wanted to comment on that issue, the last issue.

The issue to me goes back to whether you consider the fact that customers call in to that call center to be an essential facility. And if you do consider it to be an essential facilityntial IqliliE S I wanTD

MR. COWART: Okay, this is Richard Cowart from the National Council. I think the last comment, by the way, answered the question that we were having to deal with here, which is it a music club? You have to call the utility to get your power turned on. You can't call somebody else to get your power turned on. So, there is a bottleneck somewhere, and I believe the last speaker had it right.

My question is for Mr. VanDoren about Cato's position on stranded cost recovery. I don't know what it is. And the next -- the associated question is, if -- if you do believe that incumbents are entitled to stranded cost recovery when they lose money on generation at the breakup of the franchise, would you then also support a recapture mechanism that recaptures the rent associated with the wires that you alluded to as being an okay thing, would you recapture that to offset those stranded costs?

MR. VANDOREN: Since the answer to your first question is no, I don't have to answer -- that is -- well, my paper argues that the policy gain is just another source of business risk that's capitalized in the value of assets, and I give a number of examples in my paper that describe how if you take economic seriously, then the wealth transfer that occurred because of the creation of the monopoly franchise occurred long ago to somebody that mostly they're dead, so the issue of the business risk from policy change has already been capitalized into the value of utility assets, therefore stranded cost recovery is something that lawyers seem to love and economists, except those that seem to work for utilities, are quite skeptical of. So, the complicated business of what is or isn't a stranded cost doesn't come up in my view.

MR. MARQUIS: That's a great job. Right there.

CHARLOTTE LOGATES: Charlotte Gates, energy.com. When the calls -- when the Utility Commission commits the excess capacity of the call center to be bid for by various services, how does the Utility Commission then handle complaints when, for instance, a new customer to the area gets a telemarketing advertisement, so to speak, as it's -- as they're trying to sign up for electricity that says something on the order of, and can we also offer you service -- sign-up service to your local newspaper, not The Washington Post or even the Washington Times, but perhaps the Washington Blade?

MR. MARQUIS: Well, who wants to tackle that you're defending this, but how does the Commission plan to handle that kind of problem?

MR. THOMAS: I -- I do believe that it's a legitimate concern of the Commission, and attempts were made in the ad vocation to -- well, to put forth some amounts of checks on who and what could be offered through the call center. For example, the utility tried to propose a set of screens that might, for example, eliminate Teletubbies but would not eliminate the newspaper service or home wiring services, but I don't know that those screens are going to be adequate for the Commission to decide this is a type of service that we don't think -- we think it's worth including in this call center, it may be offered, that doesn't in some ways -- and your concern there is, consumers don't want to hear that stuff when they're calling to sign up for electric service, and if that's the basic outcome or decision that they make, then the cold call center, itself, is not -- third-party telemarketing is probably dead on arrival.

MS. GATES: It's actually more of a problem with it -- with the utility commission screening information, that you have to sort of --

MR. THOMAS: How do you decide why it shouldn't be Teletubbies and it should be the LA Times.

MS. GATES: Exactly.

MR. MARQUIS: We're going to have to let that be the last word.

MS. SKUBEL: It is time to have lunch. Thank you all for your discussion.

(Applause.)

(Whereupon, at 12:05 p.m., a lunch recess was taken.)

AFTERNOON SESSION

(1:30 p.m.)

SESSION V:

ADVERTISING AND DISCLOSURE OF ENVIRONMENTAL ATTRIBUTES AND PRICE

MS. ENGLE: Good afternoon. I think it's about time to get started now with the next session, and I want to welcome you all to the consumer protection oriented aspect of the FTC's workshop. Although it is true that the goal of our competition mission is also to protect consumers, the issues that we'll be discussing today are those that we more traditionally think of as consumer protection issues. By the way, my name is Mary Engle, I am the Assistant Director of the Enforcement Division of BCP, the Bureau of Consumer Protection at the FTC.

We have a panel of people here today to discuss various issues relating to advertising and consumer information disclosures in a restructured electricity market, and I just wanted before we got going to give a little bit of background on what the FTC has been doing in this area. There's been mention to a number of the advocacy comments we filed with the states, and several of those have touched on consumer protection issues as well as the competition or antitrust issues.

In addition, we filed comments with the National Association of Attorneys General on their proposed or draft green guides for electricity. Unfortunately, a representative of NAAG couldn't be with us here today to discuss their proposal, although -- so, I just want to let you know that we didn't intentionally leave them out, but scheduling difficulties prevented their being here today.

And I wanted to just very briefly summarize the FTC's comment to NAAG. Basically we took the position that it would be appropriate for NAAG to follow the general principles that the FTC has followed in our own green guides or environmental marketing guides, which apply across the board to all environmental marketing claims and not just to electricity, and to maintain a very kind of flexible approach and not set any rigid standards at this very early point in restructuring, where it's kind of tough to know what consumers think about specific claims, what actual marketing claims will be and important not to stifle information that could be useful to consumer decision making.

So, with that, I'd like to introduce our speakers. I think I am going to do one by one. Our first speaker today is Rich Cowart. He's director of the Regulatory Assistance Project, a nonprofit agency that provides educational assistance on electric utility regulation and restructuring issues of the state public utility commissions. Rich has been involved in the issues addressed by this panel for several years. In 1996, he drafted the resolution adopted by NARUC calling for disclosure of price and environmental information to consumers, and as Chair of the National Council, he oversaw the Council's research program on disclosure, which he will describe in his presentation. Mr. Cowart served as Commissioner of the Vermont Public Service Board from 1986 to 1999, serving as chairman from 1987 to 1999.

MR. COWART: Thanks, and it's a pleasure to be here to talk about this topic.

You know, it's commonplace to say that we live in the information age, but it's probably more accurate to say that we are drowning in information. Some of it's misleading; some of it is just not very useful because it's not relevant to any current decision that we are making or an insight that's currently important to us.

However, as we know and we've been discussing, there are tens of millions of Americans who are now or will soon be choosing electricity suppliers and sources, and my theme this afternoon is pretty straightforward.

state capital has characterized this. What we have here is family dinner hour after more deregulation, and poor -- the MacGregor family there is fielding the telephone calls from the marketers, electricity marketers, trying to figure them out, and is terrifically confused about the options that they may have in that market.

I recently gave a talk to a large number of consumers, electricity consumers, at a cooperative meeting, and we talked -- I talked all about restructuring, and they were an incredibly polite audience. You know, they sat and they listened to me as I talked about market power and wires and disaggregating the company and all this good stuff, but they burst into spontaneous applause, to my surprise, when I said that we had a plan in Vermont that would forbid suppertime telemarketing, and it would require uniform price and environmental disclosure.

(Applause.)

MR. COWART: Now, see, you all know what I'm talking about.

Now, this is a real challenge. How do we deal with the confusion and the consumer abuses that the FCC Chairman Bill Kennard recently referred to as the dark side of competition. Can we avoid more of the same in these emerging markets for electricity?

In 1996, the National Council decided to tackle this problem and to do so through a program that focused on consumers and not just on theory, and here I just want to quickly describe the research program and the research results that the Council's research led to.

Frequently throughout this process we found ourselves facing some tough, thorny implementation question or analytic problem, and we became very used to saying, What does the research -- what does the consumer research tell us about that question?

This program was modeled on the FDA's program that led to the development of something that we're all very familiar with, which is the now familiar food label that we have come to know and use in the grocery store. And here I want to just pause for a moment and give thanks to the folks on the Federal Interagency Advisory Council that worked with the National Council on this project. Alan Levy and Brian Rowe (phonetic) at the FDA, and Mary Engle was on that committee, Diane Pirkey was on that committee. There are folks from other federal agencies who came together to try to address this emerging question.

The techniques employed, as I say, were based on those that were well established and scientifically validated by the Food & Drug Administration. We began

Electric generation and consumption are also usually separated by great distances, and so when you turn on your toaster, you really don't know what forms of environment i le0mysually customer care. And you should have in mind here that there's a kind of aggressions law of misinformation, I guess you'd call it. Aggressions law is bad money drives out good; deceptive information drives out trust and good information. And that's a very important reason why uniform labeling is very helpful in developing consumers' trusts in these emerging markets.

Now, the research highlights. Number one, in our baseline study, we found that very rarely do Americans know how much they pay per kilowatt hour for electricity. 77 percent of customers don't know their kilowatt hour usage per month. But a very large fraction of consumers knows their bottom line. They know their monthly average bill, 87 percent of them have a good idea within $5 of their monthly bill.

In contrast to this information about what they pay, environmental knowledge is incredibly thin and characterized by something that has to be called wishful thinking. Here's an example: Only 25 percent of the respondents, even in the U.S. midwest, could name coal as the number one fuel in their region, and only 42 percent named coal even within the top three sources of fuel for electric generation in their region.

Nationally, less than one-half of consumers could correctly name even one of the top three sources of power in their region, and more than 10 percent of Americans think solar power is in the top three, even though anybody in the industry here knows that it's -- of all the conventional sources, the least -- contributes the least to the national electric grid, and I guess it's -- I mean, it's practically down there with cold fusion in terms of how much it contributes.

Research results number two: Consumers want full information. They don't want just information about price, and they don't want just information about environmental content. They want both. And I won't take you through all of the -- all of the numbers there, but just remember the bottom line that customers were in focus groups and in label testing exercises, they were more satisfied and were able to make better choices by their own reckoning when they had more information on a complete label.

Number three: Pretty much -- oh, this is now, just to peek your interest, if you haven't seen this picture yet, this is what a label might look like, and this is one of the labels tested in our studies. It has at the top some information about consumption. If you consume so many kilowatt hours a month, this is what your average price will be. It's like unit pricing in a grocery store. In the -- there is next a contract term explanation; next a pie chart showing the fuel mix of the particular product that the customer is examining; and then at the bottom, an explanation of the pollution associated with that product according to three -- the three most important pollutants that the Environmental Protection Agency experts believed ought to be disclosed to customers.

And as you can see in that very bottom part, the air emissions are expressed in relation to a regional average. They are not expressed in pounds per kilowatt hour or grams per megawatt hour or anything like that, which customers would have no way of interpreting, but rather, something that can be easily visually understood.

It turns out that price, fuel mix and emissions are all characteristics that customers care a lot about and which influence their purchasing decisions. We tested labels with and without emissions, but it turns out that, as anybody in the industry knows, there are fossil fuels that are much cleaner than other fossil fuels. There are coal plants that are much cleaner than other coal plants. It turns out that when you give customers the additional information of the emissions rate associated with a particular product, they do use that information and switch their choices. They go back to some of the fossil fuels that they thought were dirtier than they really are, and they avoid some of the choices that are dirtier than they thought they were. So, the emissions data turns out to influence choices, and giving that information to customers is something that people in focus groups said they wanted.

Uniformity -- here's a different version of a label I just wanted to show you. This is essentially the same information, a somewhat more refined version of the label, and it's the one the authors of our studies end up recommending to the National Council. You will notice that the colorful pie chart is replaced on this one by a table, and it turns out that consumers were a little better able to compare a number of competing products when they had the table than when they had the pie chart. It wasn't a dramatic difference.

We also learned that there's a lot of fights among all the advocates when you use the pie chart, because everybody wants their color to be green. So, this one does it neutrally, and we don't have that problem.

Uniformity, by the way, becomes very key. There are a lot of -- we did a lot of tests in this -- in these various label testing experiments with giving customers labels that looked different, one from another, or giving them labels for some of the products but not for all of the products, or giving them verbiage only, and, of course, the verbiage-- the marketing verbiage would differ from product to product. And we asked people to do fairly simple things. Go look at these products and find the lowest cost product. Look at these products and find the lowest emissions product. Look at these products and find the product that has the highest amount of coal or the low -- or the highest amount of renewables.

It turns out that performance of real people, really looking at the information, really improves when you give them the data in a uniform format. And as Craig Glazer has frequently said, apples to apples comparisons are highly desired by consumers and make those choices much easier for folks to make.

Early on in our focus groups, we interviewed a lot of people in New Hampshire who were in the early retail pilot program there. And those people had experience with lots of different marketing materials, and there was no disclosure requirement.

At that point, 84 percent of those people told us that they wanted uniform disclosure for all products so that they could make an intelligent decision when choosing among them.

In several other studies -- this isn't just a New Hampshire thing -- in several other studies, pretty consistently across the country, 84 to 85 percent of consumers, when asked, will say that electric suppliers should be required to disclose their fuel source and environmental characteristics of their products in a way that they can understand.

Now, I -- this is consistent, by the way, from, you know, Texas to Maine to California to just anywhere you look. People want this information.

Now, there are a bunch of key implementation decisions, and I am not going to take the time this afternoon to take you through each one, but we have tried in this process to answer the questions that are posed here. Who discloses? When should it be used? What should the comparisons, you know, be to? And how do you -- how can the governmental decision-makers who are promulgating a set of rules about what these disclosures are going to look like be sure that the disclosures are, in fact, accurate?

In order to do that, you have to have a tracking system that accurately links the generation that exists in the world to the sales that a load-serving entity is making in order to make sure that products are being accurately represented and they aren't being

all the time. And secondly, marketers want to be able to market across state lines without having to redo their marketing materials and their disclosure information repeatedly. And so for that reason we have promoted a regional -- consistent regional rule.

We're working on a similar project in -- among a number of western states and in the PJM area, and as those of you in Washington know who follow restructuring legislation, this has -- this idea has received bipartisan support in both Houses and is pretty commonly talked about as an element of legislation.

Okay, conclusions. I'd like to keep our eyes back to the beginning on essentials. If we're going to create competitive markets, we have to make competition work for consumers. If they are frustrated and confused, we have not succeeded.

Secondly, accurate disclosure can be accomplished practically and economically. It's worth the effort to try to find common, uniform disclosure standards across regions.

And finally, considering consumers' lack of knowledge about where their electricity comes from, disclosure certainly is important to these emerging markets and might well be important to consider even in states that are not planning to go to competition right away.

Lastly, I am going to hold up a visual aid. The National Council published a number of documents that look like this (indicating) describing the results of the research that I've quickly gone through today. There were a number of these upstairs this morning, and I see they've disappeared. Anyone who wants one should just give me your card, and we'll make it available to you. And they're all available electronically at the wrap Maine.org website.

Thank you very much.

(Applause.)

MS. ENGLE: Our next speaker this afternoon is Shawn Pittard. Mr. Pittard is the Policy Advisor to Commissioner Michael C. Moore of the California Energy Commission. His responsibilities include advising the Commissioner on issues relating to electricity restructuring, power plant licensing and consumer information disclosure. He also serves as Project Manager for the California -- for the Commission's Information Committee. Mr. Pittard will discuss California's experience with consumer information disclosure and advertising thus far under restructuring.

MR. PITTARD: Thank you. Good afternoon. It's only appropriate that Mr. Cowart offer to help out by flipping my slides today, because he and his colleagues at the Regulatory Assistance Project are the people that helped us in California get to where we are now with our own disclosure program.

Ms. Hamrin is also very helpful, too, but maybe she's done enough for us already.

I just want to take a couple of minutes today and -- well, first, thank you to the FTC for inviting us out and letting us kind of share what we're doing in California. As Mr. Cowart talked about, there's a nationwide -- I don't know, it's not a movement, is it -- but things are happening nationwide with power source information disclosure, and California has legislation that requires that, too.

We -- our legislation came out in 1997. We have been implementing the legislation for a year now. We're getting our first -- taking our first attempt at balancing, trying to verify that, in fact, the claims and the generation line up. So, we're in the process of doing that now. So far it's going pretty good.

And another real significant development in the last year is we are working cooperatively with the western region, finding, of course, that if you don't kind of information disclosure program.

So, what I want to do today is I'm just going to run through what we've done, use some overheads to help me, and tell you what we've done, what we've learned and some adjustments we have had to make along the way.

So, I have a pretty fancy intro here thanks to my office assistant, so I always have to make sure I show it, but here's our basic situation in California. We know that electricity travels around the grid, you know, through the laws of physics. It doesn't really worry so much about political boundaries, service area boundaries, et cetera. We know that retailers in California and the western states region made claims to their customers about the origins of their electricity. For example, they might say ours is green or they might say buy ours because it's from a certain power -- it has a certain fuel source or technology source.

We also know that consumers don't necessarily -- as Mr. Cowart pointed out -- don't necessarily know the origins of the energy -- of the electricity that they purchase now. So, it's very hard for them to make a comparison when a retailer offers them electricity from a specific source.

So, SB 1305 is our legislation that's supposed to help us out with this, and its objectives are to protect consumers from fraudulent or exaggerated claims. Also, another objective is to assure retailers and consumers that the same electricity is not subject to overlapping claims. You all also heard this -- you know, you hear the term selling electricity once and only once. You have got to be careful that you don't get double counting, especially in a regional market.

Another thing that SB 1305 tries to accomplish is it needs to describe and quantify the components of what is generic electricity. This is what you're going to compare against. It's also called residual sometimes and you'll also see it called net system power.

Well, there are some methods that are employed, we're employing to accomplish this, accomplish these objectives, and one is the power content label, which we have been talking about. And in a power content label, retailers must disclose the electricity's source contents to their consumers, by percentages in either or fuel and technology types, and then the sources are either net system power or specific purchases.

So, we'll look at basically the power content label. Now, this is the one that California adopted. Now, you saw the one that Mr. Cowart had shown us, and it follows kind of the comparative column format, but in California -- this is a good opportunity for us to talk about what California did and didn't do in its legislation. What the legislation doesn't do is have price. It doesn't have any environmental characteristics. The legislation focuses specifically on the source of -- the fuel source or the technology type.

The other thing, then, Mr. Cowart talked about a claims base versus a default, you compare it to a default. Every retail supplier needs to include a power content label in any of the materials it sends to its customers. Now, in this, they show them -- okay, here's our product name in the left column or in the middle column, I guess. The product name would be, let's say, you know, green energy, and they break down where the sources, you know, the percentage of the electricity that they sell that comes from these various fuel sources and technology types.

Then they have to compare to a California power mix, and in the earlier table that we saw, the label that we saw, it was called a supply mix. Now, if a retail supplier doesn't offer anything special, doesn't make a claim that there's a specific purchase, then by default they show the generic or the power mix.

Now, it was really tricky figuring out what to call that column, and everybody argued about it and everybody had a different idea, and we were in good hands with all the focus group work that RAP had done to help us figure out how to lay it out, but we didn't really know what to call that title, that column. So, we held a couple of focus groups of our own, which were pretty fun, and in them we asked people if they could understand basically this label and did they understand what the power mix was, and, of course, it was -- it was fairly confusing. So, we went through quite a few steps to get to this point, but one thing I found real interesting was the degree really to which people didn't understand where their electricity comes from, and people expressed real concerns that they didn't want, for example, nuclear power in their home. And this is interesting. You know, if you're not working in this business like we do, you don't really appreciate that fuel is used, it's converted into electricity, and everybody gets electricity, and it's all the same electricity, and people say, I don't want nuclear power in my house, and -- so, it was really -- it's really interesting. So, that's one of the challenges, and we have other consumer information programs that try to help there. Fortunately, this is just laying out the facts.

One other method that we use is, you know, we have to reconcile or verify these claims. So, we have got a couple things that we require. One is that all retailers will file a report with the California Energy Commission, and they need to match their specific purchases to the product claims, the claims they make to their customers.

The second thing, and this was tricky as we were putting together our regulations, was how would we verify that? And what we chose to do on a short basis, in the short term, was to require that a professional auditor's attestation be attached to the report that says, Yes, this lines up. And because what you have to do is follow the contract path back to the source, and it can actually have many, many, many steps in it, and it would be difficult to follow.

And then finally, the generators need to provide output reports to the Energy Commission. Now, all generators are required by the legislation to report to their system operator, and we're having great luck working with our system operators, whether they are muni or ISO, independent system operator. We are getting the data there, no problem. We have got other data collection efforts, too. But if a generator doesn't -- is out of state and doesn't file, then they can file directly with the Energy Commission.

All right, let's go to some implementation problems. I call them problems. I could probably come up with a better word that doesn't sound so bad. But basically the laws requiring this -- the uniform characterization of generic power or the supply mix or residual, and what we found is since all retail suppliers have to disclose this by default, sometimes it's really is kind of unfair to some of the municipal utilities, small ones.

Like, for example, we have some -- one of our very small municipal utilities in Trucking, California buys all its power from Nevada, but there -- we need to show the California supply. We have another in north western California that's buying from-- mostly from Oregon. So, the supply mix doesn't really reflect. So, they say, Gees, I try to show my customers what we are buying and what we sell them, but I'm comparing to a mix that isn't representative. So, we have got to sort that out.

Another thing is this term "audit" has turned out to be a little problem for us. And we've learned that the American Institute of Certified Public Accountants has a very literal definition of the word "audit," and we didn't really mean for it to be that literal. So, we're making an adjustment there.

And finally, you know, California retailers can make specific purchases anywhere in the western states coordinating council, and that being the fact, we had to find a way to get information from the other states in the region.

All right, so, we have got some ideas for how to solve this, and in the first case, what do we do about this supply mix being unrepresentative for everybody in the state? We say, Okay, we have got to come up with more options for that. And on November 2nd, we're bringing everybody in to a workshop to try to sort it out.

The second thing is instead of using the word "audit," there is another term that we have learned is appropriate from the AICPA, which is agreed upon procedure, and so we are working with that. Ms. Hamrin has been very helpful in working with us on this area, too.

And the last solution I'll talk about is the one that I'll focus on here as I wrap up which is the certificates of specific generation. Now, the certificates of specific generation help us both track the contract -- both follow the contract trail, it simplifies that process, but it also helps us work with the western states region, helps out a lot. So, we'll talk about the regional context next in which, you know, we know that in California there are -- well, I mentioned this earlier, you can buy power from many other states, and we're also selling out of state, and so you've got to make sure that these kilowatt hours aren't being claimed in other states since they're not all in the same verification program.

And then there's a -- we'll just skip the net system power. That's a whole another tricky subject.

So, what we have got is a regional tracking proposal that we've worked with the -- a number of our western states coordinating council committees and national committees, and the idea is we're trying to establish a common regional database that will record information about generator output and retail claims.

Now, using certificates of specific generation means you've got kind of a basic certificate, like any other certificate, that says here's what we sold, and this thing then can be moved along between sales, so you have a way to easily follow the sale back to the source. So, what we've done is the Energy Commission, since we're -- we have a number of responsibilities in the state, and at the present we're pretty much the market for green power, we decided we get -- at the request of the region, we'd get the ball rolling.

Let's just skip past the database. Let's see, let's cut right to -- can you throw up that certificate of specific generation slide, about three or four down? This is just an example of what a certificate might look like. Now, this is a virtual certificate, and some of our guys have put it up on our website and we're testing it. We're running a little pilot on it right now to see if people think it will work.

Unique identification numbers are generated. We track them in our computer, and we can then line up at the end with someone generating certificates of their own, et cetera, and we are going through those kinds of things, too.

Finally, I think I'll close by saying that one of the things that -- an additional benefit of working within the region and using things like a certificate -- using certificates is that it helps lay the foundation for kind of a commodities -- tradable commodities type of system for green power, and a number of our power exchange and automated power exchange and private exchange are both supportive of this, and the idea here is that if government can provide a certificate, it gives it a certain amount of validity. We would have nothing to do with the market. We would simply provide a certificate, and then people can use it, and trade it as they would like.

Finally, if you would like to get any more information about our program, we've got some really good stuff on our website, and if you get there, you can see our label, our instructions to people that, you know, generators and retail suppliers. We also have, you know, our pilot program has started there on our certificate, so if you want to go take a look and make any comments, we'd appreciate that, and so please -- please check in and give us any comments that you can, because it is a -- it is kind of a tricky business, and it's been less tricky, I think, implementing than it was in the Legislature, but it's still something we'd like to get right.

Thank you.

(Applause.)

MS. ENGLE: Our next speaker is Dr. Jan Hamrin. Dr. Hamrin is Executive Director of the Center for Resource Solutions, a nonprofit organization created to foster leadership and implementation of clean energy and sustainable development practices through education, training and expert assistance. Dr. Hamrin will be speaking today about CRS's Green-E Certification Program.

MS. HAMRIN: Thank you, Mary.

This afternoon, we're talking about not the theoretical but the actual, and what is actually happening out there in the marketplace, what kind of activities are we seeing, what kind of claims are we hearing made, what's really going on as these markets open.

And the most important thing if you're interested in this topic is our website address, because you can get more detail than you ever wanted to know at Green-e.org. We also have provided you with summaries of some of this -- of the Green-E Program in the materials book that you got out at the table. So, you can look more specifically there.

Basically the Green-E program is a voluntarily, nationwide certification program. It could have been government. It didn't -- we are nonprofit. It could have been a governmental activity. It happened that most of the governmental entities at that time were busy with bigger questions, like stranded costs and all of the rules and procedures having to do with restructuring, and we felt it was very important, however, to have -- to provide some guidance and some way in which consumers could know if they were being sold a product that was based on renewable generated electricity that, in fact, they were getting what they were paying for.

This is a very difficult product to deal with, because as been stated before, you can't see it, you can't smell it, you can't test it, you can't look in the plug over there and see whether there's green electrons or something else.

At the same time, this is a -- something that we realize many consumers considws jhether there's greeny v,n1my va opportunity to sell a product Ienget a premium price for it, why not just claim that's what you're doing, and who's going to show otherwise?

For that reason, because we are interested in the field, because we felt that it was important for consumers if you are going to encourage environmentally superior products, if you're going to encourage the electricity system to move toward cleanws genwsating sources, that we have some way of helping Iengiving credibility to that market. AIenthat is the reason this program was developed, and it was developed with stakeholdws groups and lots of process and lots of discussion.

The -- basically what -- and I'm going to go very fast through the basic parts of the program and then tell you what we've found so far. These are the reasons for having the program, and we were concerned both of setting criteria so that there were specific definitions that consumers could understand and also making certain that the information provided to consumers was clear and that allowed consumers to make informed choices.

The program has some criteria, requirements for -- minimum requirements for products to be eligible, but more interesting is we also require providers to undergo an annual verification process, to disclose pricing and contract information, to disclose fuel sources and to abide by a code of conduct.

Now, we started the program in California at the time we designed this program. We didn't know whether the California labeling legislation would go through or not. It did go through, as it happened, but we were just hedging our bets just in case. We have now rolled out the program into other states that do not have legislation that requires disclosure, and though I would fully agree with Rich Cowart about the importance of it, and I wish that it was everyplace, it isn't everyplace.

And so in the marketing of electricity products, it is difficult to do -- to distinguish between products unless you have some labeling, some way of comparison, some understanding of where the electricity comes from.

So, our program does require all of the companies that have Green-e certified products to label, to provide this disclosure information on all the products that they market, the electricity products they market, not only those that are renewable-based.

Some of the interesting things, first, the annual verification process. How are you going to verify this? And the answer, as you were just hearing from Richard, is that we decided to do an audit, because we're tracking the money. The money that's being paid should be going through contracts to generators who are generating renewable sources. And the simplest example is if you only had two generators and you were generating from renewables and you were generating from fossil fuel and I chose to give my money to the generator generating from renewables, this one would shut down, that one would keep going. Now, it's much more complicated, because there is many more customers, but that's the basic premise.

In addition to these things, we also -- well, just to give you some information of the kinds of markets that have developed over time, we also do a compliance review every six months, and we actually look at the advertising that these companies are doing, the claims that they're making, and make suggestions for improving those claims. And that's what I'd like to spend the rest of the time on, is telling you some of what we've actually seen, what kinds of problems and issues come up and what kinds of problems and issues don't come up.

Many of the things that people were most concerned about have not happened, and, of course, it's difficult to say, Has it not happened because we prevented it from happening or was this a concern that was not -- wouldn't have happened anyway?

The first issue is that marketers would purchase just regular power and sell it as renewable and charge extra for it. We have done the audit process, the first annual review, for all of the products that we certified in California, and we found that no one -- no one -- purchased less renewables than they claimed. And, in fact, just the reverse was true. Without exception, every marketer purchased even more renewables than were necessary to meet the demand that they were serving. So, we did not have in any case a problem of marketers purchasing or not purchasing what they said they were going to.

We do allow a four-month true-up, so that if at the end of the year the marketers had actually purchased a little less than they needed to serve their load, they would have four months in which to purchase the excess and true it up, but that wasn't needed by any of the marketers. They all purchased more.

We have seen no consistent abuse of claims and no evidence of deception involving environmental claims, just no consistent abuse of these kinds of claims by any of the marketers who have certified Green-e product.

Now, we have seen a learning curve on the part of marketers as they get experience in the market. It's been both positive and negative in some respects. An interesting aside is that competing marketers are very sensitive to what their competitors say, and so our first line of information is often a call from a marketer saying, " Did you know Marketer X was saying such and such"? We think that might not be quite clear, and you should look into it.

So, we get -- I mean, you can't be in this market two days without somebody looking at the claims you're making and making a call and saying, " Are those the right things", by one of your competitors who is very concerned that you be marketing in a legitimate way.

As I said, we do compliance review every six months and look at the claims that are made. We look at television scripts and radio scripts and advertisements

you have to say, "such as."

Now, "such as" has to be something that you really believe, to provide accurate information, and still they're limited, because the public is uneducated and uninformed.

An issue that we've found is an issue that green marketers, marketers that are trying to sell renewable-based electricity, are under tremendous pressure to be accurate, under tremendous scrutiny to review all of their materials, and they are the only ones that are reviewed that way. Most other electricity marketers, nobody's even looking at. Nobody's saying what else is being sold or when it's implied that if you go from someone besides the incumbent firm, your power may not be as reliable. We've always been reliable, so you need to stick with us. There's a lot of implied claims that are made in this electricity sector as the market gets open. The primary scrutiny is being placed on the green marketers, and those that are certified by our program, and we require, regardless of what the state law is, we require them to disclose information on price, we require them to have a single page of information on the contract terms and conditions so that it is easy for customers to understand, and nobody else is under those same requirements. So, to some extent, it's a disadvantage to them to be marketing in a green market, but they are doing that.

I think that there -- it would be a benefit if everyone had to disclose, and I think the more information that can be provided from -- to consumers, the better. Initially, it was thought that this was only a residential question, that it was only residential consumers that needed this information. Commercial and industrial can take care of their own, and besides, everyone knows they'd never buy green, never buy renewable-based electricity, so why bother? That's not what we're finding. Interestingly, 20 percent, over 20 percent of the renewable-based electricity that was sold in California in 1998 was sold to nonresidential consumers, and some of them -- many of them specified in their request for proposals or their specifications that that power be certified, because they wanted to make sure they were getting what they were paying for just as a residential consumer might.

All in all, the biggest abuse we've found, the thing that takes us the most time to deal with, the thing that day-in and day-out we have spent hours and hours and days and days, is companies claiming to be Green-e certified when they aren't, and we have spent -- had to spend an incredible amount of time defending this brand, where we haven't seen the deception in the claims to consumers, except by companies selling products that have not applied for certification, that were not certified, and that were putting that logo up on their website or in other places. Again, because competitors are so concerned that nobody's doing anything unfair, we get a call right away from somebody who will say, I just saw so and so's company advertising on their website that they're Green-e certified. Are they really Green-e certified? I didn't think they were. And so we are able to get right on it. But actually, companies claiming certification that don't have it is the biggest -- is the biggest problem we've seen.

I'd like to finish by just saying that consumer deception or consumer education, either way, we're in a whole new market area. It's an area about which people don't know a lot, they don't understand the jargon, they don't know what system power is, they don't know where their power comes from to begin with, and we have a lot of work to do in the area, and it's very difficult, I think, to balance these two things, but the education of the public has to go hand in hand with the consumer protection side, and the better educated the public is, the more they understand the issues, the more they understand what the sources of power are, how they might differ, then I think the better opportunity we have to have our consumers actually make informed decisions that are useful to them and to everyone.

Thank you.

(Applause.)

MS. ENGLE: Thanks, Jan. I was interested to hear Jan say that she gets a lot of complaints from competitors, because we hear at the FTC do, as well. In fact, it's one of our best sources of investigation. I think we even had to sue someone for claiming to be the FTC once. That's not an uncommon problem.

Our next speaker is Fred Schmidt. Mr. Schmidt is Chief Deputy Attorney General of Nevada's Bureau of Consumer Protection. The Bureau of Consumer Protection is responsible for utility, consumer advocacy, antitrust and telemarketing, securities, and consumer fraud enforcement. He has served as Consumer Advocate for Nevada's Public Utility Consumers since August of 1988. He's served as president of the National Association of State Utilities Commissioners -- State Utilities Consumer Advocates, or NASUCA, since November of 1998, and is an active member of the National Association of Attorneys General. This afternoon, he'll be discussing the jurisdictional issues between state and federal regulatory and law enforcement agencies.

MR. SCHMIDT: Thank you, Mary. I recognize the time is getting a little short, so I am going to try to be efficient here and hopefully keep everyone awake by making it a little more interactive. Since we're in a moot courtroom, and my recollection of law school days is when you have the podium and you're up here, you're allowed to call on people, so when I ask you a question on this next section, I recommend you raise your hand or I may call on you in the next part.

I want to do a quick survey, so -- which I think will help make the point of my presentation today. So, bear with me as I ask the question. If none of the categories fit you, then I will give another at the end, MR. SCHMIDT: A couple, okay. How many of you work for the FTC?

(Audience complied.)

MR. SCHMIDT: Okay, a good turn-out there. And how many of you work for a law enforcement agency, like a State Attorney General's office?

(Audience complied.)

MR. SCHMIDT: I know Alan. Okay, one, two, three -- okay. Did I miss anybody? All right.

How many of you work for consumer advocate offices, like I do?

(Audience complied.)

MR. SCHMIDT: All right, good turnout there. And those of you who raised your hand here, what did I miss, what group?

NEW SPEAKER: Trade association.

MR. SCHMIDT: For what type of industry?

NEW SPEAKER: Electricity.

MR. SCHMIDT: Okay, I'd put you in with the regulated utility industry, if that's okay. Anybody else I missed in the group?

NEW SPEAKER: The press.

MR. SCHMIDT: The press, all right. That goes sort of with the consumer advocates in my opinion.

I wear two hats today. One hat I wear is I'm the Consumer Advocate in my state, and in order to avoid the first deceptive advertising, just like Mr. Kahn did yesterday, I don't work for the Nevada Public Service Commission, even though that's what your program says. I work for our State's Attorney General's Office. I do most of my work or a significant amount of it before our State Utility Commission, but I actually run a branch in a law enforcement agency in the Nevada Attorney General's Office, and as a law enforcement officer, I have a totally different perspective or hat on sometimes than when I have my hat on and I'm appearing before the utility agency. And let me just briefly give an example or try to explain why by asking another question.

This is the phone call that the names are changed to protect the innocent but actually occurred. Good evening, Mr. Schmidt, someone calls me on the phone -- dinner hour probably, right? -- I'm calling from Green-co, the environmentally conscious power company. How would you like to play a part in reducing air pollution in your neighborhood and the country generally? We offer 100 percent green power competitive prices. Can I sign you up?

Now, how many of you think that that involves deceptive advertising? Raise your hand.

MR. SCHMIDT: How many of you think that's a legitimate direct marketing technique to use?

(Audience complied.)

MR. SCHMIDT: What if we change instead of the person saying we offer you 100 percent green power competitive prices, instead the person on the phone says, Mr. Schmidt, we're into solar and wind power. Can we help you reduce air pollution by signing you up to our company at prices comparable to the ones you pay your current utility supplier? Is that deceptive?

The point being, it is not that easy to determine, even if we have standards on printable paper, as our last three speakers talked about, it is not always easy to distinguish or determine what is and is not a deceptive practice.

Now, how do we do that? Well, one suggestion that's been made here and is being promoted around the country -- in fact, I'm pleased to say that I'm working with RAP and others on the western group to try and find a model that the western states can adopt -- but the fact of the matter is, although state statutes have been passed on electric competition and RAP is working around the country to get standardized billing formats and disclosure provided, most of the marketing that will occur to customers generally will occur through a telephone solicitation. We found that to be true in the telecommunications industry, and I certainly expect it to be true in the electric industry.

And in that telephone call, let's assume that you didn't hang up right away, you're a conscientious customer, you want more information, you've been called enough by the AT&Ts and the other marketers oca (customer, onoic industry in the United States has a better safety record than us.

Then you say, Well, what about environmentally? You claim that you are supportive of -- you were into solar, you were into things like that. Are you environmentally clean? None of our product burns any pollutants that produce anything to pollute the air. Does that sound pretty good?

Now, as a customer at that point, I may take the power, right? If I had, I would be buying nuclear power, 100 percent, as advertised in recent ads in the New York Times and The Washington Post on full page ads. That was an actual marketing campaign making those four pitches for reliable electricity, economical, consistently safe and environmentally clean. Are they wrong? Maybe not.

All of those claims can be verified?

The question I asked, then, is let's say that you get these calls and you start to get them either as a business or as a residential consumer, and you want to verify them, or you're concerned. Let's say you actually made the impetuous choice, because somebody maybe even offered you another carrot, and you switched your supplier, and the first bill you get has a disclosure of the source of power, like Mr. Cowart gave, and you find out that you did just buy power that was primarily nuclear, and you didn't want it. Who are you going to call? Who are you going to call and complain? And who's going to do something about it?

Now, the issue that I raise today and I've been asked to address is really jurisdictional issues, because the messiest part of this issue of green pricing, as far as I'm concerned, as well as other issues related to pricing generally, labeling and direct marketing techniques, are issues that right now are a huge mess because there is not a coordinated system of education, a coordinated system of standards and a coordinated system for enforcement.

And the point that I wish to make today and will ask you later is who you think should be doing that, because I assure you, given the poll that I took as who you represent, that I bet there are different answers for every one of those questions, and one gentleman here might even tell us that the primary person -- entity to do that job on some of those areas is the press, but I would suggest that some of these areas in terms of education, development of standards and information about them and then ultimate enforcement are things that most of us in this room today don't agree on as to who should do what and why.

Why is that? Well, there is overlapping jurisdiction today in a variety of agencies related to just the simple topic of green power. Some of it is at the federal level, either at the Department of Justice, the FTC or the FERC. Some of it is at the state level, because of conflicts or overlaps between federal and state laws, and at the state level, we have Public Utility Commissions, we have Consumer Advocate Offices, we have Executive Branch Consumer Affairs Divisions, and we have law enforcement agencies like Attorney Generals Offices and local law enforcement agencies, like District Attorneys.

All of those entities have some interest or involvement and some role in the process of determining whether green pricing and advertising is being appropriately or effectively and fairly done to consumers.

I should probably briefly go back and describe what my organization and we do, NASUCA. I'm not sure everyone knows, but because I saw so many hands, I'm not going to do that. I come from an office that is a consumer advocate, so let me just tell you my bias. My bias is that I have a voice for consumers in my state, and I'm expected to speak up for consumers. So, what do consumers want? The prior speakers really already addressed that. We want as much information and apples to apples as we can, and we want that information in a manner which isn't intrusive on us in our life-style and is very simple to make a decision on and not cause us all kind of heartburn or headache when the bill comes. That's basically what we care about.

How do we get that? It's very near impossible to get. Why? Because an industry, particularly an industry that wants to market a particular product and sees an advantage on the environmental side of that product, has every incentive to not give you apples to apples comparison.

Now, even if we adopt or we implement standards like the prior speakers suggested, you're still going to have those problems. So, how do we take care of it? Well, let me ask this question. If you got that phone call and you were sold a product and you weren't really sure whether you were deceived or not, or when you did get your bill, you felt you were deceived, how many of you would call the Better Business Bureau as your first phone call?

No one. How many would you call -- how many of you would call the local law enforcement agency, your District Attorney?

How many of you would call your Attorney

So, given that we have that and we have some Attorney Generals -- and although Mary referred to and said we didn't have anywhere here to explain or defend what the AGs are up to lately, we are up to something else. Alan Hirsch is going to be on the next panel, maybe he'll address that, but I'm not going to talk about that today. There is -- if you contact the National Association of Attorney Generals, you can get a copy of the recent report that was issued and presented at the spring NAAG meeting on what attorney generals are up to in determining and setting guidelines.

But the point that I want to make and as in evidenced by your hands is that there is a perception here of different entities doing the three things I talked about. I would like to make the case that each of these entities has a role, and I'd like to make you think about what that role is and have you go back home after this conference and think about how you coordinate that role rather than argue over jurisdictional turf.

The first one is education. I don't think we can go forward in a competitive electric environment without education coming from a variety of sources. The industry and marketers itself, the media, the public utility commissions and traditional law enforcement if you all go out and do your own thing, I guarantee you one thing will happen. Consumers will be confused, because you're going to get mixed messages and the type of apples to apples suggestion that was made won't occur.

The second area that I want to suggest that there's overlapping jurisdictions and roles is that of the development of standards or guidelines. What RAP is you call -- how many of you would call your local utility to find out? Many consumers do that in surveys that we've reviewed and evaluated. All of these agencies have some role.

Now, typically law enforcement agencies have the best tools in place in terms of the 50 states who all have deceptive trade practice acts, so that false or deceptive advertising is a violation, and they can prosecute. Unlike what we heard the other day, where there's some jurisdictional concerns or issues, particularly in antitrust areas, there is generally not state action doctrine exemptions in state deceptive trade practice acts. There may be filed rate doctrine problems, but there are not generally state action doctrine problems, so that you can develop a set of

Thank you very much.

(Applause.)

MS. ENGLE: Thanks, Fred. In addition to your citation to the FTC's green guides, I would also mention the FTC does have a telemarketing sales rule that will govern the telemarketing of electricity, and I don't think I remember the CFR cite, I think it's 16 CFR maybe part 235 or something, but that's there as well. --

NEW SPEAKER: 310.

MS. ENGLE: 310, thank you, Carole.

Our next speaker today is Diane Pirkey. She is Program Manager for the Electricity Restructuring Program in the Office of Power Technologies, Office of Energy Efficiency and Renewable Energy in the U.S. Department of Energy. Ms. Pirkey manages a technical research and outreach set of activities to assist states in their electric restructuring. She has participated in the development of the Comprehensive Electricity Competition Act, the administration's utility restructuring legislation. Ms. Pirkey will be speaking today about the Act's consumer information requirements for disclosure of information to consumers about the content and price of electricity products.

MS. PIRKEY: Thank you. Thank you, Mary, for having this session.

I will be very brief, because the time is coming to a close, and I want to say I want to thank Fred, I think, for setting me up perfectly. Sometimes when the federal government comes on, and particularly DOE these days, you sort of say this is the 800-pound gorilla coming, but I think from what he was saying, I hope from what you'll see here that I'm going to present is really a solution to a lot of the issues that have been raised by this panel.

We did help sponsor this interagency task force that Mary Engle described to bring together the various parts of the government that would be responsible and interested in making sure consumers have accurate information about the new sales market that's out there for buying electricity products, and we used that research, as well as the research sponsored by the National Council on Competition in the Electricity Industry, and I want to introduce Craig Glazer here, Commissioner from Ohio, who's the Chair of the National Council.

So, what we did is we did sort of a bottoms up approach to this federal legislation that was introduced to Congress on April 15th. So, I won't take the time to go into it, but this is just a one-page summary of what the provisions are, which include the consumer protection sections. It is available on DOE website, which is basically doe.gov, and you can read those specific provisions. There are no hearings at this point scheduled on it. There is sort of bipartisan discussions in Congress about how to proceed on a bipartisan type of federal electricity restructuring legislation. So, we're sort of waiting to see what's going to happen.

The specific consumer protection provisions -- yes -- which don't show up real well, there are several different sections. The one that I think relates specifically to the panel interests here is the consumer information, and this does set out a disclosure requirements for price, terms and conditions of what the contract is, the type of energy resource that's used to generate the electric energy and the environmental attributes of the generation, including air emission.

And then it still would allow states to do whatever they want to do. One of the specific examples, in the state of Massachusetts, where the labor contracts are extremely important, they have required the labor content that is used to produce electricity be included on their label. So, the intent here is just to create this uniform operating situation for marketers to be able to sell across the country. Electricity's going to be sold across state boundaries, it's going to be sold from one region to another, and this just simply creates exactly what Fred was talking about, sort of a real level playing field for consumers to get equal kinds of information wherever the electricity is sold or by whom, and it does set up the Federal Trade Commission as the one responsible for the enforcement. They have the experience in enforcing and understanding what is necessary to put out those kinds of rules and regulations. So, I don't want to take any more time. There are other consumer provisions there. I have a few copies if anybody is interested of these specific sections. I hope we have a few time -- some time for questions, and so just look to the future for hopefully some type of national requirements in this area. We think this will really benefit the consumers.

MS. ENGLE: Thanks, Diane.

(Applause.)

MS. ENGLE: Actually, I think that clock up there is fast, so we do have a good five or seven minutes for questions, if people have any.

Okay.

NEW SPEAKER: How does the National Council or any other group plan to handle nonair environmental problems? You might call this the dead fish, dead bird, duck or mountain agricultural run-off.

MR. COWART: Jan may have something to add to that or the others, but I'll just start. One of the things -- I mentioned earlier about the attributes of a good label, is that it tells customers things that they want to know that are important to their purchasing decision but which they wouldn't otherwise know. One of the things that we learned in our focus groups and labeled testing exercises is that -- here's an example. Customers know that nuclear power produces nuclear waste. That's, of course, why it wasn't mentioned in the script that Fred was reading to you.

Now, therefore, when we sat down to figure out how to not make the label too complicated, we realized that that wasn't an attribute of nuclear power that we needed to put on the label. That's in contrast to the emissions data, which varies greatly from facility to facility and which consumers really don't have any way of knowing about.

The same thing was true with the focus groups in the Pacific Northwest, for example, with respect to fish. It's very hard to quantify, you know, dead fish per megawatt hour, for one thing, but also -- or fish that never got spawned per megawatt hour is even tougher. The -- and there was such a high degree of

information.

In the case -- every generating resource has negative environmental impacts, and every consumer has different things that are important to them. So, in -- in our case, in setting some criteria so that we would have some definitions and a place to start, we also did not want to make the choice for the consumer. We simply wanted to provide them enough information that they could make an informed choice. Some consumers don't like hydro. Hydro they think is the worst thing in the world, and they would not choose a product that came primarily from hydro generation.

Others, that's just fine.

So, the issue is to provide enough information so that the consumers can make an informed choice for themselves based on their own interests and preferences, and we have a website, we have additional information there on the impacts, both positive and negative, of different kinds of generating sources, but what is it that's important? That depends on you.

MR. SCHMIDT: The key, though, is to have additional sources of information. You can only do so much in a bill, you can only jam so much in it. I guess I would argue most consumers would have no clue what bio mass means or is, so why are we dividing that category?

We all can debate that, but I think the key for the consumer is you need to require, as a federal mandate or in a state mandate, that each bill have an additional source of information. We found this out the hard way in the telecommunications industry, but when we deregulated pay phones, the first thing that caused the biggest problem was, if you put the coin in the phone and you tried to do something and there was a problem, it wasn't that you wanted to call and check the rate, but if you had a problem, how could you get ahold of someone and who?

So, you put a regulation in place that's nationwide that requires a 1-800 number to a specific source that's consistent that can answer the question. So, for example, each of these bills should have a number for a nonbiased, third-party source that can be contacted to answer further questions. Generally the proponent of the bill, the person selling the product, will put their number on if they're giving good customer service and do that, but in utility bills, one aspect of regulation that I think that should be continued or carried over is that third-party number so that whether you decide it's the utility commission or a consumer affairs office, that should be printed on each bill so someone can call and say, What is bio mass and, you know, is that really clean?

MS. ENGLE: Yes?

CRAIG GLAZER: There's a place here where some of these policies come in conflict with other policies, and they deal in the -- I want to get away from the dead fish for a minute and talk about price disclosure. We've done a lot on the subject of price disclosure in natural gas, we have a very active program, but one of the things we find is it gets in the way of some other things we're trying to accomplish. For example, we heard yesterday about the need for realtime pricing, and price signals and responsiveness of customers, that customers can achieve the best savings if they can do some load shifting, particularly if we get to a realtime market.

The label works contrary to that on price, because the label reduces everything from a single monthly price, and when you get into a situation where people have variable prices, as I suspect most marketers, it gets very difficult to accurately portray that and not just having to print the label at the time that that was the lowest provider.

I would be interested in people's thoughts on that subject as to how we do this and not have the label

according to what?

But you have a very good point there that we do not want to impede innovative pricing regimes by requiring price disclosure. The flip side of that is that if you permit marketers to not reveal their average effective price, you end up in a world where there will surely be major rip-offs, and so there's a real tension there.

MR. SCHMIDT: And that's full employment for my office, of course, but, I mean, the telecommunications industry is a good example. I mean, do you think it's fair that a consumer could be told it's 5 cents a minute to buy long distance service and not be told that he has to pay a $4.95 fixed charge every month? Or should the customer be forced to calculate or figure out how many calls they make a month in determining whether having a fixed charge plus that charge agllks from being provided as a sales technique in order to convince a consumer that they can save money by using these different options and pricing daily or changing their use patterns, but you should give some minimum information, and that minimum information should be an apples to apples simplistic, basically one-or two-number calculation like RAPP has developed, and in addition, requirement on a contract term. If you're forced once you switch and take that company to stay with them for six months or for one year, you have a right and should know that up front.

MS. ENGLE: Okay, my thanks again to all the panelists for an excellent discussion, and we will take a break for about ten minutes and reconvene.

(Applause.)

(A brief recess was taken.)

SESSION VI:

SUPPLIER PRACTICES IN A RETAIL ENVIRONMENT

MS. HOWARD: Well, I guess I'll go ahead and start as people are coming back in from the brief. My

President, General Counsel and Secretary of GreenMountain.com, which just changed its name from GreenMountain Energy Resources, and Carole Reynolds, who's Senior Attorney in the FTC's Division of Financial Practices.

I'll introduce them more fully as they get up to speak.

First we will hear from Barbara Alexander. Before opening her own consulting practice, Barbara was Director of the Consumer Assistance Division at the Maine Public Utilities Commission for almost ten years. She also served as Superintendent in the Bureau of Consumer Credit Protection of the Maine Department of Business regulation between '79 and '82. Her specialty in her consulting practice is electricity issues. She represents state public advocates and commissions in various states, and among her other credits, importantly for this seminar, she's the author of a DOE publication that came out in October of 1998 called a blueprint for consumer protection issues in retail electric competition. It's a very thorough and informative publication, I can say that, because FTC had some involvement in commenting on it.

And with that, I'll give you Barbara.

MS. ALEXANDER: Good afternoon, and thank you very much for remaining with us for our last panel. I know how hard that is. I know how bad the traffic is around here, and I'm sure many people have left to catch airplanes.

But I am going to give an overview of many of the issues that are touched on in the publication that Gina mentioned, and it is the executive summary of the publication is in your program materials under one of the last tabs in the book, and the entire report is available on the Internet at the address that is also up on the corner of the excerpt that you have, so you can get that if you'd like.

The states have spent -- who have adopted electric restructuring, and there's over 20 of them that have now adopted comprehensive legislation on this topic -- have spent quite a bit of time in that legislation talking about consumer protection issues, and I defined that very broadly, and I'll give you a list of all the things that, you know, potentially could be described as relating to that topic, but I think that the legislators involved in this process have come to the conclusion about the importance of dealing with consumer protection regulation as we move from a monopoly that is heavily regulated in price and term and service quality to at least a -- the creation of a theoretically competitive market, and we all know how hard that's going to be -- for part of this vertically integrated industry, that is, the generation part of the bill, and in some states, billing and metering and collections and customer collections, as well.

So, they've -- they're sensitive to the need for consumer protection regulation for the reasons I've listed here. First of all, they've become well aware of the fact that what we're doing here -- what we're talking about here is not a grass roots movement. This is not happening from the bottom up. This is not because people want to shop for their electricity provider. There is no evidence that people are asking for the opportunity to do this.

This is a government change about the nature of the industry and the way we're going to regulate it that is coming from the top down, and because of that, people are unaware, uninformed and not really capable of making informed choices in that environment without some help.

The electric restructuring movement is being implemented primarily by large industrial customers, and therefore, there is concern by legislators that the benefits of this created market may not trickle down to residential and small commercial customers very fast or at all. And so a lot of states have created regulatory and legislative benefits for those groups of customers as a means of transferring some visible form of benefit as a result of this change for these small use customers.

And then finally, of course, electricity is a necessity of life, and the system we've got going in this country, while many people boo-who the regulatory process, the fact is everybody's got it, we have a vast grid in which reliability is extremely high. Certainly there are parts of the country where you pay more for it than in others, but the fact remains we have a universal service available, and it is a necessity of life, and the provision of it is a matter of incredible health and safety. People die if they do not have electricity. They cannot heat their homes with any kind of a central heating system without electricity.

And lastly, and not least, people are very angry about telephone competition and how this was rolled out for them and what they've experienced with it in many cases, and legislators have imported those frustrations into a lot of these state laws with regard to directions about the need for consumer protections up front about the sale of electricity to avoid some of these problems.

Here is the consumer protection agenda, and we will not talk about all of them, obviously I don't have the time to do that here, and you have talked about some of them with regard to some of the other panels. Consumer education, how to shop and compare prices for electricity, how changes should be made to the regulation of the distribution utility -- that includes the code of conduct issues -- how to regulate this new type of entity, the competitive suppliers of energy, who should regulate it, and the implications for the institution at the commission have been significant in terms of enforcement tools, staffing and resources that they will need.

States are moving to adopt comprehensive consumer education programs. They address multi-media campaigns as well as more low-key, community-based methods of transmitting information. Most of the programs are designed to make people aware of this change. Remember, we discussed -- we talked earlier abouthappeneth0 -Aould ree for it through special assessments or included in distribution utility rate payer funded programs, distribution utility rates.

You had a session a minute ago about

Federal Reserve Board.

But the point is that there is a clear model available to help us require competitors in this electricity market to disclose a price to a consumer in a way that allows comparisons to be made.

I point this -- this is the model electricity facts label from the New England area that was alluded to earlier, and as you can see, the requirement is that the cents per kilowatt hour be calculated at different usage levels. This will allow a supplier who wants to vary their price by the amount the customer consumes to provide to customers information that allows a high use electric heat customer to immediately detect that this product will be beneficial to them and probably a low use, you know, nonwater heater, nonelectric heat user will pay more, because of the way the price is designed by the supplier, and this is very important, both the fixed fees, monthly, and any other variable or cents per kilowatt hour fees need to be rolled into this calculation, and this is a method of disclosure that is an apples to apples price comparison that had been adopted in Montana, Maine, Massachusetts and a couple of other states. It is not uniform in its approach, but it is the coming wave of second generation regulations.

Here's the document that was missing from the discussion of the last panel. Customers are being told -- maybe they're entering into the contract over the phone, maybe they're responding to a pitch down at the mall, who knows, who cares, but the point is every customer needs to have some information about the deal that they have entered into, and the states are requiring the supplier to give a terms of service disclosure to their new customers, usually within several days of having obtained the customer, and it has to be in writing and it has to be in plain language and it has a whole list of things that need to appear in it, and it's specific to the deal (disclosure twrRecocf 0 - thaf

You don't have to wait for the first bill. You don't have to complain to any agency. You can just cancel. And that's the -- that's the approach I think that we licensing, certification or registration, the fact is it is the public utilities commission that will evaluate these applications and make decisions.

In almost every case, there's a technical requirement that has to be demonstrated, that is, they have the capacity to buy or obtain generation and then sell it to people, retail customers, and a financial evaluation of the ability of the supplier to conduct its business in a way that will make sure that we have reliable and safe generation systems by setting up this retail competition market.

In several states, they have to post a bond commensurate with the level of sales that they make or have made in the state, and the bond will change annually. The bond has important consumer protection implications. It is this tool that states can use to enforce their consumer protection rules when they have a particularly egregious violator, of their slamming rules, of their other consumer protection disclosure rules, unfair trade practices, by lifting that license or revoking or suspending their certificate and using the proceeds of the bond to restore monies to consumers who have been wronged, the states will have a tool far in advance of anything available, at least used by, the Federal Communications Commissions in dealing with these outrageous predators in the telecommunications industry who rip people off constantly and in a state-by-state manner across the country before they're finally caught and usually end up declaring bankruptcy before anybody gets paid off, let alone fines or penalties.

So, this is a very key issue. Every state has adopted a regulatory regime to accommodate this licensing approach, and they are all coordinating with their attorney generals about how to impose -- you know, to regulate the disclosure laws, the unfair trade practice issues and the marketing matters.

Most states are also very nervous about the whole issue of redlining or discriminatory credit practices. A number of states have made the suppliers comply with their utility rules with regard to deposits and applications for service, so that in Pennsylvania, you could not get a deposit -- a supplier could not get a deposit unless the applicant has had a demonstrated history of nonpayment of their utility or electric bill, not just because they maybe didn't pay off the car loan last month. And they have adopted specifically references to the Equal Credit Opportunity Act and the prohibition on discrimination in many ways.

I know slamming is a big issue. Every state is addressing it, and it's obviously a hot button. With very few exceptions, the states are not requiring customers to sign a contract before becoming a customer. New Jersey and Montana are two exceptions that come to mind on that, and we'll see how that works in New Jersey. A lot of suppliers have said no thanks, they can't operate in a market in which they have to go chase customers to get a signature before they get to enroll them. But in most other states, they're doing third-party verification by an independent verifier who keeps an electronic or tape recorded message, a copy of the verification.

They all prohibit the use of checks and prize monies and various other lottery methods by which some of the more outrageous conduct in the telephone world has occurred.

I just want to close, and I know I'm taking more time than I should, but -- and I'll answer questions if you have any on what's happening, but here's from the states and the legislators' perspective what they want to avoid. You can clear all the barriers to entry you want. You can take down all the stop signs. You can take down all the crosswalks. You can take down all of the various things that regulate the traffic in the road and put those big heavy trucks out there and let consumers navigate their way across the street with no rules, but nobody's doing it that way. They're all creating a new form of regulatory approach to the sale of electricity. They're building on traditional state enforcement and consumer protection programs, and I think that we're in the midst of a really interesting experiment with regard to the way in which this occurs and the ability to track how different states have handled issues, and we can all build on these obvious laboratories out there for the next several years.

Thank you very much.

(Applause.)

MS. HOWARD: Thanks, Barbara.

Our next speaker will be Richard Sedano. Mr. Sedano has been Commissioner of the Vermont Department of Public Service since 1991. Before that he held engineering positions with the DPS and with the Philadelphia Electric Company. He's a member of numerous industry groups and organizations, most notably he's chair of the National Association of State Energy Officials and a member of the task force on reliability for the U.S. Secretary of Energy Advisory Board. He's a member and former Chair of the Power Planning Committee of the New England Governors Conference.

I turn it over to you, Rich.

MR. SEDANO: Thank you. Well, thanks for

hanging around for us and good afternoon.

Let's see, let's just remember why we're here. The whole idea of my presentation is to give you an idea of what it's like from a number of roles that I play. I'm the Consumer Advocate in Vermont. I'm also part of the Executive Branch. I'm a Commissioner in the Administration of Governor Howard Dean. I'm also the State Energy Office Administrator, which is why I get to be involved with NASEO. So, I get to do all these things which kind of can seem like a lot, but in a sense it's nice, because I've heard a few people here say well, there's all these different things in all these different states, how do you coordinate? Well, in Vermont, I'm the way we coordinate them, and --

MS. ALEXANDER: Just come ask Rich.

MR. SEDANO: And the Public Service Board, which Rich Cowart used to Chair, and Judy, hear from them. They make all the regulator decisions, and between us, that's pretty much it. I will say at the outset, you might wonder, what about the Attorney General? Well, we have a very good relationship with the Attorney General's Office. They deal with anything criminal. If you commit fraud, we send you to them. Otherwise, if it's just a matter of regulatory law, matters like that, you have to deal with us.

So, these are the kind of things that at a basic level I think we have to be worried about as public servants in the states and in the federal areas, also. We want to make this a good thing, and certainly I can tell you that from the point of view of elected people, they want this to be a good thing, too. Sometimes they have a short-term focus, and so it's up to us unelected bureaucrats to perhaps think about the long term.

There is a lot of room for improvement in the electric industry today. You -- there's a lot of different kinds of consumers out there. Too bad. We're going to treat you all the same. The environmental quality is -- for air and water are stuck in lawsuits and EPA administration. Well, that's too bad, too, not much we can do about that except keep persisting with our friends at EPA on those matters.

Regulation has been very humbled in the last few years. We have all sorts of defeats in terms of nuclear plants and other things, and we've discovered that competition really is a remarkable engine to cause costs to go down. So -- and generally, one thing I didn't put on here but I've thought of since I've been listening to all of you and the speakers here is that really innovation is not very well promoted by the current industry, as well. I don't want to devalue the good parts, and Barbara mentioned one of the key ones, that we have terrific reliability in the United States, and we also have to remember that compared to other countries, our costs are not bad. Other countries do a lot worse than we do.

I should also mention that we in Vermont care a lot about energy efficiency, and we've noticed that while the existing industry had produced quite a lot of energy efficiency in the past, that's been eroding, and there is a need to try to figure out ways to jump-start that.

Now, one of the reasons I was invited here was to talk about Vermont, which is interesting. I'm -- we're one of the states that wanted to be a pioneer, but then we wanted to be part of the pack, and now we're just hoping to get there eventually. So, why am I here?

But we did have a lot of good ideas, and I can at least reflect on how the idea of competition hit Vermont at the very early stage when nobody else was doing it. There was a lot of suspicion, this idea was received very suspiciously by elected representatives throughout our Legislature. The general public, I think, you know, Rich Cowart's illustration about the dinnertime phone calls, well, you know, the telecommunications issue, a real -- a real significant albatross for all of us trying to explain to people for why competition is good.

A lot of legislators who are very good at cliche -- I can't tell you the number of times I've heard this one, and to some degree, from what I've heard in other states' experiences, there is some truth to that in terms of how people really feel about -- about being disrupted from the routine which they might not really like, but they're worried about how much worse it's going to get.

So, I think in Vermont, when we get going, despite our -- I think very intense familiarity with how the industry can work, and -- I think we're going to -- from the point of like insurance, we're going to probably over-insure in terms of making sure that -- especially small customers are protected. That's going to suggest that there's going to be codes of conduct and other rules which will be a little bit more specific than probably the marketers will like.

We will try to keep it simple, I think. One of the reasons we'll try to keep it simple is that the regulatory apparatus in Vermont just isn't that big, and to some degree we just can't have a process where there's constant disputes. So, the arguments that people have made up here in the last two days that you just can't have a parade of disputes and what you want to have is a system which largely provides incentives and causes people to behave properly, I think that's -- that is going to be our objective, but I do think that we will have a lot of protections in it.

Also, I think we are very concerned about promoting aggregation. Again, that's going to be a way for residential customers to benefit, and from the point of view of marketers, I think what we would see in Vermont or what we would tend to see are things that will favor folks who want to bring together lots of residential customers together.

One of the things that we were promoting, by the way, was an innovation -- we thought at the time it was an innovation, it's been replicated by a lot of our friends in the cooperative community -- what we call a consumer code, a consumer-owned cooperative which would be marketing to all residential and small commercial consumers, basically a marketer owned by its customers, not affiliated necessarily with any existing cooperative. This would be a new, basically revitalization of the original cooperative concept.

One of the other things I just want to spend a minute on is the basic service offer. I haven't heard too much about that in the last couple of days, and I think that that has the potential to take a lot of pressure off the marketing community. There's -- I've heard some people suggest that what we need is to provide for all of the marketers the shared responsibility to serve all of the customers who don't want to choose or all of the customers who are in undesirable areas, a defined risk pool kind of approach to dealing with a provider of last resort issue. I don't really favor that. I think that that's really one of those things that it's best for the state to deal with and that the state should proactively figure out a way to do that and a way that's competitively neutral and in a way that promotes the consumers who want to choose or who have the capacity to choose or will eventually choose to get them going as quickly as possible, but to take care of basically providing a backup offer.

I think Maine's -- Maine's trailblazing on bidding out -- I don't know if they're the only ones who have done it, but they've to my mind done a very good job of constructing a way to bid out the basic service offer, which I think is a good thing for people to emulate if they're looking for something like that.

The other thing that, as the Consumer Advocate's

Office -- by the way, the answer to Fred Schmidt's question in Vermont is where do you call if you have a problem, that's my office, also. We have the 800 number that people call, and we get thousands of calls every year about people who are upset about something. Many of them are upset about their telecommunications service right now, because they get confused about their providers' offerings and such, and they get into a tiff with their long distance carrier, and we have just had an order from our public service board saying, That's fine, you can have an argument with your long distance provider. You won't get your dial tone service cut off. I think that's exactly the right thing we advocated for that, and I think that's the same kind of provisions that will need to be in electric, as well.

Now, I've mentioned that I'm also involved with NASEO. I'm fortunate enough, my peers have elected me chair of NASEO, so I get to think about where these kinds of movements lead to some of the issues that NASEO cares about.

First of all, NASEO is made up of individual states, and we are all very, very individual. There's a tremendous amount of both pride and stubbornness associated with that, and I think the policy makers need to -- I'd say go with the sort of Zen approach to this

hearing that for two days. You've got to have a place to go, and when you go there, they have to be able to resolve your problem, and they have to be able to hold the utility or the marketer or whoever's involved with causing the problem accountable.

I think, by the way, that that means that bonding -- and Peter's going to have something to say about the barrier to entry that bonding represents -- but from the state perspective, there has to be some sort of real earnest involvement in our process that can only be assured by some financial assurances.

I think that one of the questions that I'm not completely clear about yet is supplier to supplier or supplier to utility disputes. Will the state be involved in resolving those disputes? On the telecommunications side, we are when it affects consumers. So, if the RBOC is responsible for providing facilities, you get the -- the competitive local exchange carrier into somebody's business, and the RBOC screws up, then I got involved to bang on the RBOC. However, if it's a matter of, you know, you didn't pay me for the services that I provided to you, well, that's a contract issue, and the interconnection agreement provides for a whole other dispute resolution, and we don't get involved in that, but I think states have to deal with the fact that there's going to be some kinds of wholesaler-to wholesaler disputes that we do get involved with and some that we don't.

Oh, I didn't mention the analog to OSS in telecommunications. Well, suffice to say there has to be a way to process orders, and I think that the -- where that leaves me is states that decide to go to retail competition have to allow themselves enough lead time to accomplish that. I have to say when I saw the New Jersey law passing legislation to go to competition, I just can't believe it, and I can't believe Herb Tate was able to be here and look so relaxed, because I just think that's an amazingly daunting problem of getting those things organized. And from my perspective, when I go around Vermont and tell people, when is competition going to happen, I say a minimum of a year of when all the final decisions to go -- preferably 18 months, but a minimum of a year from the final decision to go before there's an actual retail competitor making a retail sale.

Promoting key policies, NASEO is big on renewable energy and energy efficiency. Also, because we all work for Governors, we're big on jobs, and so we are very big on economic development.

Some of you must know my Governor.

Also, I think that responsible behavior of the new companies is very important. We have heard about the Green-e and how that can go good or bad. Sunny Popowsky's price report is terrific. I would hope to produce a report just like that when we have competition.

Also, one thing that I'm looking forward to that didn't get addressed in the last panel, when they talked about different pricing of -- regimes is bundled pricing, not just the realtime pricing approach and what confusion that can cause, but what happens when you bundle a lot of services together. How are you going to report the pricing for that?

I guess I'm convinced that we can use the label that Barbara and Rich have shown you, but I also think that some techniques for doing that in some fairly unusual circumstances have yet to be developed.

Finally, I think I wanted to mention that functional wholesale markets with the ISOs correcting for market failures is going to be an important challenge. The ISOs now are doing a lot of administration of grids, and that's all well and good, but they are going to have a lot of new tasks to support the retail market. So, in conclusion, I just want to say states want to be able to do the job that we think we're going to do at the time we're going to do it. No mandates on when to start retail competition. We know we need some help. We know that fraud statutes, antitrust statutes, need to be updated to accommodate this new world. Guidelines can be very, very helpful, and I think conferences like this will help us make sure that we get exactly the help we need and hopefully no more.

Thank you.

(Applause.)

MS. HOWARD: Thank you.

Next, Alan Hirsch will give us a perspective from the law enforcement side. He's Special Deputy Attorney General at the -- and Director of Consumer Protection, Antitrust and Utilities, for the North Carolina Department of Justice, also chair of the National Association of Attorneys General Working Group on Electricity Industry Restructuring.

MR. HIRSCH: Thank you, Gina.

No slides, guys.

I'm going to do a little bit something -- something a little bit different than what I had originally intended, having listened to the program for the last few hours, and Gina, I am also going to try to do it in ten minutes in light of the time here, so wave that thing at me in ten minutes, and I will try to shut up after that. I expect extra brownie points from all of you because of that.

Fred Schmidt described Attorneys General as law enforcement agents, and I have heard that quite a bit in the last hour or so, and, in fact, that's precisely how we view ourselves, but I don't think that's normally the way people think of Attorneys General around the country. There is a very clear distinction in our minds in those offices between the idea of enforcing the law and protecting people in broad generic terms as opposed to a regulatory agency, which follows complex sets of rules and regulations, makes specific determinations about what must be done on what piece of paper at what time and under what circumstances.

So, let me talk about law enforcement a little bit, law enforcement specifically in this case in terms of general consumer protection laws and in antitrust laws. Every Attorney General in America, State Attorney General, is charged with that responsibility.

Traditionally, State AGs have always worked in competitive industries. That is, if it's a problem in the computer industry or a problem in the steel industry or a problem in retailing or whatever it might be, we have broad -- we apply broad general principles. We have traditionally not been involved in regulated industries. That's one reason, for example, why every state has an insurance commissioner. It is a highly regulated industry. It is not nearly as susceptible to the law enforcement model, rather, more a regulatory model.

But in electricity, like in telecommunications, the character of the industry is changing, moving from a regulated monopoly toward the idea of competition, and thereby bringing us back in in the back door, as it were.

whoever was from the press?

Okay, well, in light of that, I'm going to be circumspect in how I describe it, but I would probably use more precise language if it wasn't quotable here today.

NEW SPEAKER: I won't quote.

MR. HIRSCH: Nevertheless, you all use your imagination a little bit, but I am going to try to say it in a way without actually making any accusations. You have all seen the ads for 5 cents a mint or 8 cents a minute or 10 cents a minute, and as Fred alluded to an hour or so ago, they either don't tell you, or if they do tell you, they tell you the finest of print that it is actually going to cost you $5.95 a month or $4.95 a month. There are various plans with various flat rate charges. Does anybody know, by the way, what their plate rate is?

NEW SPEAKER: For long distance?

MR. HIRSCH: For long distance, the flat rate surcharge for long distance. One, two, okay, a few.

Now, let's do another test, and I don't have any prizes, so -- but are you aware that you're paying $3 a month, approximately, give or take, if you are an MCI customer, an AT&T customer or a Sprint customer for generic charges, universal service charges, carrier access charges? Is everybody aware of that?

NEW SPEAKER: Sure.

MR. HIRSCH: How many were not aware of it?

Interesting. Well, in this educated audience, that's understandable. I suspect, this is just a guess, that probably 80 percent or more of the general public is not aware of those charges.

What's more, the ways in which those charges are placed on phone bills is extraordinarily deceptive. Terms are used which suggest that they are taxes or government fees or surcharges. There is virtually no way that somebody that doesn't ask the question can tell that this is an AT&T charge, an MCI charge. You cannot tell from that bill in the way it's described.

And so, if everybody does it, and at least the three major companies do it, it seems like it's just embedded in the price when, in fact, think about $3 a month times, I don't know, how many customers -- a hundred million phone lines? I'm just making that up, but that's probably about right, times 12 months of the year? I mean, we're talking about a fair bit of change here.

Nobody says that they shouldn't charge these dollars if they want to. I mean, it's a competitive industry. If they want to charge an additional $3 a month, that's just fine. The problem is that we've moved from a regulated industry to a nonregulated industry. The regulation hasn't caught up, and the law enforcement hasn't yet kicked in. That, I promise you, ladies and gentlemen, is going to change. Now, again, I would have perhaps said that in a different way but for our friends in the press.

But that's what AGs do, and that's what AGs are going to do on that subject, and when the time comes for electricity, hopefully with that, as well. The idea that there can be slamming and cramming and that it's still going on in telephone is outrageous. This is absolutely outrageous. Why does it happen? Well, for those of you that have followed the debate at the Federal Communications Commission, for example, there's all kinds of arcane arguments, from an antitrust point of view, should we require a written -- the necessity of a written slip before giving change? Well, if we do, that inhibits new entrants coming in, it stifles competition, so we better not do that. On the other hand, how do we involve cheating. The Federal Communications Commission -- finally they adopted a half

telephone, for example, when anybody can charge any price they want, if you file that rate, the argument is it's too bad. If I lie about it, if I don't tell you the extra $3 a month or the extra $6 a month, it doesn't matter. I'm protected because I filed this piece of paper that 12 people in the world have actually read. It's a bizarre interpretation, and I don't think the courts have yet told us what direction they're going to go in this new environment, but it's another example where members of regulated industries necessarily want the best of both worlds. They want regulation when it helps, and they want competition when it helps, as well. It seems to me those in law enforcement really should have one goal, and that is to be sure that the public, the people that buy this stuff, get told the truth and are treated fairly. Once again, this is not rocket science. Maybe we should get back sometimes away from the complexities and the thousands of pages of rules and regulations. And by the way, I notice, Gina, that even the FTC schedule for this event had to be published in the Federal Register. I -- and back to some common sense ideas, you know, common sense can be overrated, but then again, we often all get too close to the forest and sometimes miss the trees.

Thank you.

(Applause.)

MS. HOWARD: Thank you, Alan.

Next we will hear from Peter Zamore who is Vice President, General Counsel and Secretary of GreenMountain.com, formerly GreenMountain Energy Resources. He was also previously General Counsel at GreenMountain Power Corporation, not the same as those as, a small Vermont investor owned electric utility. He was also special counsel to the Vermont Department of Public Service and the Vermont Public Service Board for five years.

Peter?

MR. ZAMORE: Thank you, Gina, and I appreciate having the opportunity for being the token marketer here on this panel of consumer advocates. I want to move this podium a little bit over. We'll see how it goes. I want to talk a minute about my company before I get into what we think are a couple of more important consumer protection issues. GreenMountain.com, and we have gone through a name change. We were GreenMountain Energy Resources, and to make it a little more confusing, our electricity products are under the brand name Green Mountain Energy, but we are marketing electricity primarily to residential consumers in deregulated markets.

Right now we're focused on California and Pennsylvania. We'd like to go into New Jersey, we've got a little problem with some of the requirements that they've put in place that I'll describe in a minute we sell electricity products featuring renewable resources, including -- like Jan Hamrin -- wind, bio mass, landfill gas, a little bit of solar, and also some of our products including nonrenewable resources, including large scale hydro, including natural gas, are electricity products, the environmental attributes go into the regional grid. We don't claim that the sales go directly to the consumers' home.

We have engaged in extensive marketing, not only to create brand awareness and to create awareness of our company, but more importantly, to be able to help create a new product category. It's a crazy product category called Green Electricity. It's like a VCR, it's like a minivan. It's a paradigm that consumers have to get, and it's been a real struggle to do so, especially so when we're talking about a product whose benefits accrue almost exclusively to society at large and not to the purchasing consumer, and also because the manufacture and transport of this product are so incredibly intangible.

So, we've tried to be creative in communicating with consumers to identify the environmental problems relating to the generation of electricity. We've tried to catch their attention through rock concerts, balloons, presence at events and more traditional forms of marketing.

We've been an active participant in proceedings throughout the country that have considered opening up their markets to electricity competition, and two of the more significant consumer protection issues that I want to spend a little bit of time on are the documentation or verification that should be required to demonstrate that a consumer is consenting to switch suppliers, a slamming issue, and also the issue concerning licensing or bonding.

When we talk about switching, we're really talking about slamming, and so the question really is is slamming an issue in the deregulated electricity market? Well, we don't have much information yet. We're still too early into the history in the electricity side to know. There have been a couple of proceedings in Pennsylvania, but we really don't have comprehensive statistics yet recorded on consumer slamming complaints on the electric side, as we do on the telecommunications side.

I will jump on the band wagon and criticize what has gone on in the telecommunications side. 60,000 complaints to state and federal regulators last year, slamming complaints, that's not a good situation, and it's particularly problematic with the smaller operators. The larger ones have slamming complaint rates of 0.1 complaint per million dollars in revenues. The smaller operators have complaint rates that are a thousand times above that. So, there is a huge disparity in the records of the various companies.

The point I want to stress is that there are at least two significant differences between telecommunications and electric, and time will tell through experience whether these differences prove out. We think that they do.

The first is that unlike telecommunications switching, on the electric side, you have to produce a piece of nonpublic information. You've got to produce an account number, and that's not a public -- public information. On the telephone side, all -- your account numbers, your telephone number, you can get that any number of ways publicly. It's not private. So, that is one specific check on unauthorized switching.

The second one that has been adopted in Pennsylvania and California and that we support is a concept that's been borrowed from home solicitation sales, from second mortgage financing and other areas, which is to have a three-day right of rescission after the consumer signs the agreement or gets all the terms and conditions, has a complete understanding of what the deal is before they're finally committed.

So, we believe that these two are fairly significant changes and that as a result we are hopeful that the issues will not be as significant on the electric side as they have on the -- been on the telecommunications side:

So, what should be required? We believe there should be verification coupled with potential sanctions. The verification should include that there should be no switching unless there's provision of nonpublic information. In terms of what the specific verification is, it should be tailored to the medium that is used for signing up, and this is a very important point.

When a consumer contacts a supplier by telephone, it is a real burden if you then have to tell a consumer, Well, you have to actually provide us information through another medium, through a written agreement. If a consumer contacts us through the Internet, it is a real burden if we have to turn around and say, No, we need to have you call in a special 800 number or a third-party verify.

Consumers are difficult to get in contact with, especially a second time around, and it's important to be able to complete the piece of work through the same slamming.

And finally, we do support fines and potential license revocation if there are a pattern of abuses in the slamming. As to state licensing requirements, which is the other area I want to discuss, our context is that we are a start-up company. We don't have a utility-like balance sheet. We don't have an investment grade, and that we provide residential service with dual billing. And just so we're understanding what dual billing is, that means that we bill for the energy portion of the service. The utility still bills for the distribution piece and the stranded cost and other charges that may be required.

The reason why we do that is that if we have the distribution revenues flow through our company, there would be a legitimate need for significantly increased security requirements, and we have chosen not to undertake those security requirements but instead have dual billing.

The context is you have state interests for screening out casual operators. California opened their doors initially, and there were a ton of folks that signed up, I forget how many, but I think it was on the order of a thousand signed up initially to provide -- registered with the state to provide service with -- in

California. So, there's a -- there's an interest in screening out casual operators, there's an interest in assuring that tax revenues, gross receipts tax, sales tax or whatever are collected. There's an interest in avoiding power supply default, which can be a significant issue for the marketers. We've got an interest in avoiding undue administrative burdens, and we've got an interest in avoiding undue financial burdens, which again, for start-up companies, can be pretty significant.

So, what do we think is reasonable in this regard? We think clearly there should be provision of background information on the company, on the principals of the company, on the technical requirements to provide service. We support the notion of some base level of security for all operators to cover the cost for the state to do its investigating and to screen out those who are not really interested in providing service in the state. We support the notion of providing security in some form, cash, bond, letter of credit or whatever, to assure that the state gets its tax revenues, but the amount of that security has to be sized by reference to the lag between the time that we get the tax revenues and the time we pay it back to the state and the amount that might be passing through our hands. And finally and most importantly, we believe that the power supply risk should be addressed through standard counter-party security measures at the power pool level rather than at the retail level, and that's fairly important for us, is to let the system work at the power pool level, let them work it out, not have a separate layer of financial requirements in the event that those requirements on the power pool level prove insufficient.

Just a note on that, this is one of the two issues that -- three issues, excuse me, that have caused us to decide for now not to enter New Jersey, is the level of financial security that has been required and also the requirement in New Jersey of a wet signature for all sign-ups, which we believe is burdensome for us and results in a significant attrition in the amount of customers who will actually sign up.

I want to talk briefly about other consumer protection issues affecting marketers. It's important, and this is the third issue for us in New Jersey, it's really important for the state to have a good, solid, comprehensive consumer education program. This is a brand new market that's opening up, and consumers have to hear from the state, not from the utilities, not from the marketers, but from the state what's going on, and not just about the rate cuts that may be in place, but that choice is happening and what choice means, that reliability is not going to be affected. How you go about informing yourself about the various competitive entrants, about the various offers, and the process for signing up and what the consumer's rights are. These are important pieces of information for the customer to have in order to get comfortable with this concept of choice in the electric industry.

We also think it's important to have strong protections against potential affiliate abuses, and the discussion this morning, one thing that I want to remark on is that there was a lot of conversation on the cost side of preventing cross-subsidies and the type of regulation that economic regulators are very comfortable with; that is, allocating costs -- book costs or whatever.

What is important to us, as much as the cost side of things, is on the revenue side of things, and by that I mean our ability to attract customers and the difficulties we have when we are competing against incumbent affiliates or affiliates of incumbent utilities that share the name of the existing utility. That can be a real problem for us to overcome because of the implied assurance of reliability, and we feel that it's very important that -- and following on the survey

aggregation policy where the aggregater automatically has everyone aggregated within a certain jurisdiction, a so-called opt-out method, then essentially what you have is the mother of all slams. Everybody's in there unless it's a pleasure to have all of you here, including, on this particular panel at this point in the day.

Before we go on, I have another answer to the question who are you going to call, and it's the Federal Trade Commission. We have an 800 number set up, 1-877-FTC-HELP, and it's very active, and the Commission is very willing to take on calls in this area.

Let me mention that there are -- before I go on with specific comments, these comments are my own. They are not necessarily those of the Commission or of any particular Commissioner.

In the past few months, there have been a number of calls coming into the Commission staff regarding financial practices issues in this area of electricity deregulation. These calls usually start with something that's a very discrete or specific issue. It often starts with something like, Ms. Reynolds, I have a question, I promise you it will only take two minutes. 45 minutes later...

What happens is we discover that the issues are very interrelated, and it's usually not just one issue, but it spans many, many related issues and many, many related federal financial requirements.

It's also become quite apparent that there's an extraordinarily diverse group of players emerging in this area, long beyond the generators and the retail electric suppliers, on into the aggregaters, very diverse marketers, and many, many types of advertisers that are entering the scenes. There are also obviously many types of issues emerging, including issues relating to out-sourcing or subcontracting of various functions that have previously been performed by a single entity or far more limited entities.

There are also a lot of issues that are arising in the area of advertising. As I had mentioned to you before, advertising is a significant area here. It's a very big focus of the Federal Trade Commission generally, and I suspect will become a very large focus in this area, also.

Finally, one of the big issues that we have heard over and over again has to do with payment options, and I'll mention some more of those, but there's a lot of talk going on about creative ways to enable consumers to pay for these new forms of -- or for the new types of business that's being generated by all these different entities, including issues that come in from metering and billing services.

So, all of these and other issues are coming in through more and more calls, and the one thing that's in common with all of them is this: This area in terms both of compliance from an industry side and enforcement from a state and federal side involves these diverse requirements that need to be considered together, and the failure to do that can only lead to, I would suggest, in the future very extensive remedies that could be applied, and from an enforcement standpoint, a fair amount of enforcement in this field.

I want to turn to a few examples under the various statutes and regulations that are enforced by the Federal Trade Commission just to give you some more specifics here. The Truth in Lending Act, as has already been mentioned -- and it's implementing Regulation Z, which is actually written by the Federal Reserve Board -- is thought of primarily as a disclosure statute, which it is, but it does not just apply to creditors. It also applies to advertisers of financing terms, and there are apparently a lot of very diverse financing plans that are being considered right now, including the issuance of credit cards, the issuance of charge cards, and the development of open-end billing programs.

I know when doctors and dentists and medical and dental clinics started getting into this area, people looked and said, Well, the Truth in Lending Act couldn't possibly apply to this area, because that only applies to someone like a bank, doesn't it? Answer, no, no way. It applies to those who issue credit and also, as I mentioned, to advertisers, and there are some diverse programs that are being considered now. So, many new entities might be covered by these rules. They may be covered by all of these billing rules, all of the error resolution rules, disclosures, in many different fields, including in the applications, in the solicitations that we have been talking about that may be coming out from many kinds of marketers, people who may not realize that they are covered by these rules but, indeed, are.

By the way, let me mention that there are model forms in this field for people who are developing or are first going into this area and do not have the background yet to develop their own forms. There are model forms from the Federal Reserve Board that make life a lot easier for anyone who's forging into this field. Those are also found with Regulation Z at the end of the regulation, and there are commentaries -- there is a very extensive commentary by the Federal Reserve Board, an official staff commentary, that also can make life a lot simpler for people.

The Federal Trade Commission has a manual, How To Advertise Consumer Credit, which you can find on our website -- by the way, I have to make a plug for that, too, www.ftc.gov, which basically runs through the advertising requirements in a very clear and succinct manner.

In addition to the credit area, there are payment options being considered in the electronic fund transfer area. These can involve not just financial institutions, who you may think are normally covered by the Electronic Fund Transfer Act, but people who are honoring and issuing debit cards. It does not take the bank or savings association to be covered by these rules. It's far more diverse than that, and, in fact, I have had some discussions with people who are considering getting into this field regarding the usage of debit cards. I strongly recommend -- I strongly advise that people consider looking at the Electronic Fund Transfer Act and Regulation E for anyone who is considering that particular option.

There are a lot of rules, as well, under the Equal Credit Opportunity Act and Regulation B. There's a very broad prohibition here against discrimination, very broad, enforced by the Federal Trade Commission, and there are also rules pertaining to the issuance of notices, both for actions that are taken and for adverse action.

The Commission recently also held a workshop on credit scoring, and the transcript from that is available on our website. I also recommend that to you, for guidance in this area. There is a manual that is issued by the Commission also, " How To Write Adverse Action Notices", -- if you consult this, it simplifies life in terms of people just starting to get into this field. These rules have already, in the equal credit opportunity area, been applicable to this area, but more of them will become applicable, because there was a partial exemption that applied primarily to record retention and some issues concerning marital status. All of that will disappear now with the deregulation that's going on. ECOA is a little different in this respect. The Truth in Lending Act had, for example, a more extensive exemption that is also rapidly becoming a casualty of deregulation, but ECOA has largely been applicable already with certain exceptions that will now pretty much fade from the landscape. So, there has to be broad compliance with these very important rules.

There are other statutes that I think you should be aware of, that the Commission is very active with, the Fair Credit Reporting Act, which does not solely apply just to consumer reporting agencies or to credit bureaus, the simple lay language term. It also applies to users of information, of credit report information.

It's applied to those for quite a while, but now it also applies to furnishers of credit information, and there is a very strong accuracy mandate now. Entities that are in this area or entering this area need to be aware of this, because you could very well have liability in this field.

The Fair Debt Collection Practices Act is another requirement that many people think, Oh, that couldn't possibly be applicable to what I'm doing here. I'm not a debt collector, and I'm not planning on having a debt collector. Well, not quite, because first of all, if entities start using debt collectors, of course, that would become applicable, but it can also apply in other circumstances -- for example, to creditors that do not collect in their own name and start collecting in another name, and we've actually seen some instances of that. So, in this field, it could very well affect what you in the industry are doing and others who are enforcing are looking at.

Let me give you a few other examples that have -- some of which have been mentioned previously and others haven't. The Credit Practices Rule, this is an FTC rule, and it prohibits -- it applies to certain lenders and it applies to certain installment -- retail installment sellers, but it prohibits wage -- certain wage assignments; it prohibits pyramiding of late charges; it requires certain notices regarding co-signers; and there is really no reason why as we move further into deregulation these requirements could not as well be applicable to this field.

The Telemarketing Sales Rule, which was mentioned, and the Commission has a manual on this, " The Telemarketing Sales Rule", which is up on our another entity's plan.

Well, cost savings, depending on how they are presented to the public, may very well have deceptive aspects to them, and certainly these are areas that we've looked at in other contexts, other industries, and I strongly recommend considering any statements about cost savings very cautiously before using them.

The Door-To-Door Sales Rule is yet another rule, another Federal Trade Commission rule that could very well be applicable to this area, and it involves sales, leases, rentals of consumer goods, $25 or more, and this occurs at a place other than the place of business of the seller. Most commonly, the buyer's residence, but not necessarily just there. It could be at a facility that's rented or used for a short time and certain other areas. The Door-To-Door Sales Rule is certainly one that we could conceivably see a fair amount of activity in the future.

Although we don't really have time to go into, in detail, privacy in this particular workshop, I do want you to be aware, if you're not already, that this is an area of great concern at the Commission right now. There was a report to Congress in June of 1998, among a lot of other things that are going on at the Commission, " Privacy On-line: A Report To Congress", which you may want to peruse and look through. I'm sure it will have information that would be relevant to the deregulation in this field.

It's also available through -- you can track it through our website, as well.

Finally, let me mention issues of slamming and cramming. You have heard about proposals from the Administration on this for express authority to the Commission. Cramming already is in other fields, the telephone field, for example, an issue of great complaints at the Commission. I am hopeful that it won't -- you won't see the problem here, but unfortunately, it sounds like from what we've been hearing and what I've read in this field and my discussions in this area that it's yet another area that could be fraught with problems in this -- pertaining to cramming and slamming, and Section 5 of the Federal Trade Commission Act certainly is one that could be involved in enforcement in that area.

In closing, let me just mention that I think the way to ensure both compliance from the industry standpoint but also to assure enforcement from states and from the federal side is to look thoroughly at the issues that come in; issues that sound like they involve only advertising may often involve billing and other issues if you look far enough behind them, and the ability to fully take care of the problem, if you will, or to solve, if you are from the compliance standpoint, to eliminate liability up front, is to look at this very thoroughly and very fully.

I appreciate the opportunity to talk with you all today, and I assume there will be time for questions now.

MS. HOWARD: Thanks, Carole.

(Applause.)

MS. HOWARD: We do have about five minutes for questions, if anyone has any.

If not, there -- I did have one question I wanted to ask about one thing no one mentioned, I think, is uniform business rules. There are a number of groups that are studying uniform business rules and what should go in them, and I wondered if any of you have any views on whether they are valuable, what are the most important things that should go in them, and how should they be enacted, whether by voluntary industry action or at the regional or national level regulatory.

MS. ALEXANDER: I'll give a quick response to that.

Uniform business rules is another term for the have adopted. It might also refer to the methods of the -- how the supplier interacts with the local distribution utility in terms of transmitting customer enrollment information and the kind of electronic interface that is being developed in most of the states to effectuate enrollment and billing and various transactions between those two entities.

But most of the states have adopted a disclosure, a customer information rule and licensing rule, a rule about slamming and various other consumer protection rules, and it's often just labeled Consumer Protection Rule, and they are the various codes of conduct that govern the suppliers' interaction with the customer. Then there are other sets of rules that the Commission has adopted with regard to regulating the suppliers' interaction with the utility, and maybe that's the business rule that you're talking about. I'm not sure.

MS. HOWARD: Well, I think -- I believe the -- there's EEI is making a study of -- I think it's more like best practices in an effort to make them uniform, because there's a perceived benefit by having things uniform, whether it's on a national or a regional basis. There's a group called Coalition for Uniform Business Rules, and the National Energy Marketers

talk with each other in that way. We've made terrific progress on the label in New England. I think there is -- all of us in regulatory business appreciate that confusion can be minimized, if we can come to some consensus about interstate rules. So, we already have incentives to do that, and I think sometimes we have to be reminded. Some states don't have the kind of relationships that we have in New England to deal with their regional colleagues, but I think that that's perhaps something that marketers can encourage, especially in those regions where those relationships already are working very well.

MS. HOWARD: If there are no other comments, I think we're out of time. Thank you to the panelists for some great presentations and thank you all for coming very much.

(Applause.)

(Whereupon, at 4:45 p.m., the workshop was concluded.)

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CASE TITLE: ELECTRICITY WORKSHOP

HEARING DATE: SEPTEMBER 14, 1999

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: 9/27/99

SUSANNE Q. TATE, RMR

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I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

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