

Letter from Larry Bean to Hazel O'Leary

July 15, 1996

The Honorable Hazel R. O'Leary
Secretary
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

Re: Electricity Restructuring

Dear Secretary O'Leary,

In your recent presentation to the National Association of State Energy Officials (NASEO), you asked NASEO to give DOE its views on restructuring of the electricity industry. You also asked NASEO for suggestions on how DOE could play a positive role in this area. I am writing this letter on behalf of NASEO to share with you our perspective on these important issues.

In most states, the state energy office is either the Governor's energy policy maker or the executive branch's energy policy analyst and advisor. Increasingly, Governors are being drawn into the restructuring debate and looking to the state energy offices for advice and recommendations. Public utility commissions and their dockets have traditionally been the forum within which most issues affecting utilities have been decided. The restructuring issue has moved beyond the sole providence of public utility commissions. As the electricity industry gets deregulated the issues move from the rate regulatory arena to the policy arena. These policy forums involve a much broader group of interests and stakeholders than the customary utility, regulator, and ratepayer interests and a different and new set of decision makers.

Given this major shift to policy making and the increasing inclusion of other interests in making decisions regarding the electricity industry, it is crucial to the success of restructuring of the electricity industry to recognize that there are new players in the debate and allow them to participate. In particular, state executive branches and their energy offices are becoming increasingly important decision makers in utility industry restructuring. In Committee to serve as a policy voice of NASEO on restructuring issues and to propose initiatives in

order to get important public policy issues in utility restructuring presented to the attention of decision makers in Washington D.C. and the various states. The Electricity Committee also will serve as an information source on restructuring for state energy offices. These comments reflect the Electricity Committee's major concerns regarding utility restructuring.

There are a number of opportunities for state-federal cooperation. States would like

to explore the opportunities with DOE of examining these types of issues together through the NASEO Electricity Committee.

Issue 1:

The importance of Getting the Transmission System Right

The transmission system is no longer the sole providence of utilities, but rather is the vehicle of commerce for the new players in the restructured utility industry. Allowing these new players access to the system alone does not necessarily assure that commerce will occur efficiently and freely on the transmission system. An equally important public policy is getting the pricing right on the system. A major focus of the work of the Electricity Committee involves pricing for and planning of the transmission system. We must work toward a more efficient transmission system.

The transmission system affords opportunities for state and federal cooperation because some aspects of the transmission system are locally controlled, while others are federally controlled. Somewhere in this statutory and regulatory morass, cohesive interstate policies need to be advanced. Specifically, Regional Transmission Groups (RTG's) offer a unique opportunity for state and federal cooperation to achieve national goals.

FERC offered RTG's as a vehicle to resolve many of these pricing and planning issues on the transmission system. If the RTG's can work through these issues, FERC has agreed to support the outcome. This is important from a public policy perspective because RTG's have all the players as members including, transmission owners, independent power producers and marketers, transmission dependent utilities, and states, either commissions or energy and siting offices. These innovative efforts hold out hope for innovative solutions to many of the contentious issues regarding the transmission system. RTG's should allow regions to develop solutions to planning, pricing, access and siting problems on the transmission system that make sense from a regional perspective. In resolving these issues the RTG's will implement the national policy contained in the Energy Policy Act of promoting "the economically efficient transmission and generation of electricity."

DOE should support and encourage RTG efforts in its testimony and dealings with FERC because they are, in all likelihood, the place where innovation in transmission pricing and planning will take place. DOE should continue to support its funding for state participation in RTG planning and pricing activities, where cooperative efforts are just beginning to bear fruit. Discussions regarding forming independent system operators and power pools are taking place and, to date, these discussions have occurred solely within the utility community. DOE should support state participation in negotiations regarding the formation of power pools and the independent operation of regional transmission systems.

Issue 2

Retail Wheeling

Retail wheeling is an issue that points out the difficult nature of the decisions that states are faced with in choosing among competing policy options on restructuring. The decision of whether to allow retail wheeling is an issue outside of FERC's jurisdiction. The decision is left to each state. A number of states will have bills introduced in their legislatures to provide direct access to generators and brokers for certain groups of customers. New Hampshire has already passed such a bill. Governors are also being asked to take a position on or propose such legislation. "One size fits all" is not the answer, and it is conceivable that individual states could make substantially different policy decisions regarding retail wheeling. These individual state policies have significant impact on the national interest because of the interconnected nature of the transmission system. A patchwork of different state legislation could create problems, as could preemptive federal legislation. DOE, FERC, and the states need to work to develop cooperative interstate solutions to issues such as retail wheeling, in order to collectively achieve the broader public interest.

The states generally believe that DOE shouldn't go to Congress or FERC supporting federal preemption of state decisions pertaining to issues such as retail access or siting of transmission facilities. Rather DOE should encourage states to resolve these issues collectively and should support mechanisms that would facilitate states working together to develop interstate policies in areas where states now make individual decisions. Overall, it must be clear that retail issues are state issues and not subject to federal jurisdiction.

Issue 3

Achieving Important Public Policies in a Restructured Industry

A host of public policies are affected by restructuring the electricity industry. The major areas of public policy that are of common interest to NASEO and DOE are in achieving energy efficiency, addressing the needs of low income customers, deploying renewable technologies, economic development and achieving environmental protection. These areas of public policy are at risk in a restructured electricity industry. The issue that restructuring raises is not whether these policies are important, but how to achieve the policy goals in a restructured industry. Proposals range from a charge on the wires, to set-asides for renewables, to energy stamps, akin to food stamps, for low income customers. Since state and federal interests are so similar in these areas, there is a wonderful opportunity for jointly thinking through these issues and crafting a series of solutions to serve the needs of both the states and the federal government. In light of these changes in the electric industry, programs such as the state energy programs, Weatherization and LIHEAP, are more important today than they have been in the past. This is occurring presently at the same time federal program cuts are being made. In addition, funding of energy research and development is being threatened in this environment and should not be. In short, restructuring the electric industry should not be an occasion

or excuse to abandon or disable policies long held to be valuable.

A word of caution, however. Many in the restructuring debate are bent on using the regulatory structure at both the state and federal level to avoid change. If our effort focuses on this type of thinking, we will fail. We should be looking at creating markets or trying to think of ways to use markets to advance the public policy outcomes we see as important. Getting us all to think "outside of the box" is something that a cooperative effort might be able to foster.

Issue 4

Funding the Doing

DOE could make a significant contribution in electricity restructuring by funding activities, such as transmission pricing and planning in the RTG's and development of innovative efficiency programs in a restructured industry; the "doing" that results in change. This would be much better than funding the "studying" of what might happen and writing of "white papers" that hold some intellectual interest, but usually do not result in anything changing. Several states are individually or cooperatively developing and putting in place policies that will shape the electricity industry in the future. DOE could facilitate the states' efforts by providing funding, especially in working on transmission issues that clearly transcend state boundaries. Since much of this work is interstate in nature, it is difficult for individual states to convince legislative bodies to fund such efforts.

In closing, I should reiterate that states and the federal government need to work together to arrive at a vision of restructuring that makes sense and actually has a chance of succeeding. We have to find a logical way of restructuring the electricity industry with a collective series of separate state and federal actions and decisions.

The NASEO Electricity Committee has identified several possibilities for state and federal cooperation for you to consider that would make a substantial contribution to restructuring the electricity industry. We would be interested in your thoughts and response to our suggestions. We would also like to meet with you to discuss the possibilities. Please call at your earliest convenience so that we can arrange a meeting to begin these discussions.

Sincerely,

Larry L. Bean

cc: Electricity Committee
State Energy Directors
Frank Bishop
Jeff Genzer