

Vermont's Comments on Electricity Restructuring

November 13, 1996

To Secretary O'Leary DOE

It has been my good fortune for our paths to cross three times in the last couple of months. It has been good to see you in the east and the west promoting the important issues related to restructuring the electric industry nationwide and promoting renewable energy in places like Vermont. Your support of the Burlington Eco-Park has inspired many, so it is with some sadness that we hear of your plans to move on. I hope you do not become a stranger to these issues, and that your new challenges are fulfilling.

This letter covers the comments of the state of Vermont on electric industry restructuring and federal legislation which will enable it. I know you and your staff are working hard to develop the right proposal which balances the many interests and makes a positive contribution to consumers. While we don't have proposals for every issue, I hope our thoughts will contribute to your efforts.

I want you to know that Governor Dean and I are committed to securing the benefits we believe will come to Vermont and the northeast when retail choice is allowed while addressing and minimizing the real risks. And Rich Cowart and I will be pushing hard: to be comprehensive, to be innovative and to do it right for our people. If there other ways I can contribute to your effort to do the same at the national level, please do not hesitate to call on me.

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COMMENTS OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE ON BEHALF OF THE STATE OF VERMONT ON RESTRUCTURING AMERICA'S ELECTRIC INDUSTRY

"Standing still is not an option." With these words in its October 16 Report and Order, the Vermont Public Service Board calls on the stakeholders of the electric industry to contribute to building a new electric industry in Vermont. All around us, our neighbors are at various stages to a similar effort. Yet elsewhere in the country, this issue is not on the radar of leaders in some states.

It is our point of view in Vermont that those of us working hard now are leading a movement for what will eventually become retail electric choice for everyone in the United States. Many of the balances which have settled on the electric industry over a hundred years will be disturbed by these changes. State and federal officials share the task of resetting the market forces and public benefit responsibilities to deliver the potential which restructuring holds.

We want to review in some detail our thinking on issues which may be candidates for inclusion in federal legislation which would support the movement of retail choice for

American electric consumers. Generally, Vermont will support provisions which enable and facilitate competitive markets, and will look critically at federal directives and mandates on the implementation of retail choice. Comprehensive restructuring legislation in 1997 is timely, but from the menu of possible issues, we hope DOE will be judicious in its selections, because it is the states which will get indigestion if the menu is off.

While Vermont is grateful for the opportunity, through Commissioner Sedano, to address the department and deliver some comments at the DOE town meetings in New Jersey and New Mexico, perhaps our more developed thinking will enhance what he has said already, and fill some gaps.

Date of choice - The federal government should not impose a date by which all United States electric consumers should have choice. This goes against a fundamental rule which should apply generally to this legislative effort: **enable competition, don't mandate it**. The electric systems in each of the fifty states have unique qualities and problems to resolve as we all consider retail choice. Let each work through these in their own way. Do not be persuaded that this movement is "too important to be left to individual states." Rather, this movement is too important to steamroll the interests of states, where these qualities and problems are best understood.

We urge DOE (and others) to trust in the irresistible force of new technology which will necessarily lead us to retail choice, as it has in telecommunications, rather than force states to move before the citizens in some of those states see a logical need. A national approach to retail choice certainly should not be taken for the convenience of large energy corporations feeling that a fifty state legislative strategy is too much trouble. We would remind DOE and others that in the many years between divestiture of AT&T and the Telecommunications Act of 1996, states had an opportunity to prepare for retail competition in an orderly way, and most did. The issue of a mandatory date may be an appropriate issue for the future, but it is premature today.

We do not believe that the so-called "patchwork" of states in different places on the retail choice question will be a problem. Under FERC's leadership, a vibrant wholesale market for power will emerge. In states which embrace competition, that power will be dissociated in countless ways. In other more traditional states, the utilities will still be able to deliver the benefits of stream-lined wholesale markets to consumers if that is the choice of the state. There are many differences among our United States -- in tax policy, banking -- and yet the nation thrives, and interstate commerce adapts.

In closing this point, Vermont is practically indifferent to a mandate on a date - we will move quickly for our own reasons regardless. But we do not want any backlash from an overreaching federal law staining the inherent merits of these changes in the eyes of the public here.

Jurisdiction and Order 888 - Federal law should be clear about the bounds of jurisdiction between federal and state regulation. Failure on this score will lead to gaming and forum shopping. Washington counsels will benefit, but few others will. Our preference would be a clear statement in federal law that retail transactions are covered by state jurisdiction, while wholesale transactions are federal. If this is not practical, I think at least codifying statements in FERC Order 888 on the ability for states to impose system benefits charges and competitive transition (stranded cost recovery) charges is critical to a smooth transition.

Certainly, federal law should not mandate abolition of rate base/rate of return regulation in favor of performance based regulation. While there may be many good reasons to make this change on a case by case or state by state basis (and Vermont would agree that there

are), the federal government should not insert itself in this issue.

Reciprocity - Federal law should not require that, as states open their markets to retail choice, states should or must refuse entry by firms from states which have not so acted. A reciprocity requirement diminishes competition by limiting the retail sellers in a given state to only those from states which have retail competition. This protection only potentially benefits one group: the local incumbent utility companies. Utilities concerned that they will not have an opportunity to sell into a closed market, while companies in those markets can invade utility territory, will have to cope with that challenge. Again, states will move at their own pace, and are in the best position to decide whether local utilities need such protection. Eventually, Vermont expects all states (and neighboring provinces too) will see the benefits to their people of retail choice. And reciprocity requirements would lead to non-constructive game-playing -- siting company affiliates in "safe states" to get around such rules. Frankly, states which decline to allow retail choice will sacrifice benefits and that should be incentive enough to open up.

Retail stranded costs - Federal law should say nothing which would interfere with the states deciding in ways of their choosing how to deal with the stranded cost issue. The reasons for stranded costs are diverse and the responsibility the utilities have for them varies. States and their legislatures and regulatory commissions are best positioned to resolve this issue.

Exit fees - Federal law should say nothing on the subject of exit fees which would inhibit or promote their use as a transitional mechanism to competition. An exit fee is just one among many ways to address the transitional problem of retail stranded costs. If a state determines that exit fees are a fair way to deal with conflicts arising from stranded costs and customer choice, it should be free to do so.

Exceptions -- Federal law should not enable some customers, like Amtrak and the federal government itself, from getting around the preference of the state on when customers should receive the opportunity for retail choice. There are many reasons why the Congress or the Administration may wish to consider exceptions for federal government purposes. All these should be rejected. The transition to choice must be seen by the average member of the general public as intended to benefit all. Creating or encouraging loopholes will be more damaging than it is worth. As a footnote, recognizing the special challenges facing Amtrak and its control of long corridors, especially in the northeast, it may be appropriate to authorize Amtrak to get into the electric transmission business as soon as they are able.

Regional Regulation - Some state and federal officials have suggested that a regional regulatory body receiving authority from the state and federal governments may be a more effective way to regulate and oversee the new markets being created by the restructuring movement. As a state executive branch agency, accountable to the citizens of our state, the Vermont Department of Public Service is reluctant to go too far with the concept that we would cede authority on matters of great interest and importance. At this point, the DPS can say only that all new approaches should receive a fair evaluation. Congress would do well in this session to authorize states to explore these alternative regulatory systems and enter them if they so choose. In so doing, Congress would direct FERC to cede jurisdiction if states met certain requirements, and would direct FERC to participate in joint regulatory process as appropriate.

Power Pools, ISO and Reliability - Federal law should reinforce the effort of FERC to reform wholesale electric markets, reform power pools, create independent system operators, and promote reliability. A clear preference in law for system operation which has significant authority and operates clear of undue influence from generation and transmission owners is desirable, if the ISO structure is not mandated.

Reliability should be promoted by assigning new authorities to the reliability councils, which designate an ISO to implement that authority. A clear preference in law for reliability in the restructured world to be as good or better compared with our existing system is desirable. State siting authority of transmission facilities should remain unchanged unless a voluntary system of regional regulation supercedes it. Siting authority should not be transferred by federal to FERC. FERC should look to other market oriented approaches to assure reliability and to encourage through pricing policies construction of necessary transmission facilities.

Many states are looking at ways to certify or license new electric power retailers. Vermont suggests that FERC may need to play a similar role with wholesale aggregators and possible new transmission service providers.

Low Income Consumers - Vermont cares about universal service for electricity, and about assuring that electric service is available to everyone who wants it. Energy affordability can be a life or death issue. States will determine what support is necessary for their particular circumstances. States now receive federal aid in the LIHEAP and Weatherization programs. Vermont would plan to rely on and build on these programs if our state determines that supplemental aid to low income consumers is necessary to compensate for the relaxed regulations which accompany retail choice. So we wish to reinforce yet again the importance Vermont assigns to the stable continuation of LIHEAP and Weatherization as so much else in our energy economy is about to change.

Planning - The Department of Energy should propose in its FY 98 budget that funds be available to assist the states in the transition to retail competition. Aid is appropriate in the following areas:

1. Distribution utilities will be the focus of a new kind of planning in the public interest. Distributed utility planning integrates financial and other appropriate considerations as utilities consider investing in distribution plant, or potentially cheaper options like small scale generation or energy efficiency. This is a direct descendant of Integrated Resource Planning and reflects that large scale generation investment in a competitive market is no longer a factor which can be significantly influenced by a distribution utility planner or a state. It also reflects a recognition that astute planning of this type will drive costs down further. States and utilities need help to develop methods to do this work.
2. Ashley Brown gave a speech a couple of years ago at a DOE/NARUC Restructuring Conference about how states were relatively unprepared to deal with overseeing distribution and transmission systems because their energy offices and commissions and public advocates have generally no experience with the models which the utilities use (contrasting this with generation, for which the states have a lot of experience). This situation remains, and as T&D receives more attention, this weakness is more glaring. The DOE can help by investing in making T&D models for personal computers more accessible to states in terms of expense, ease of use and maintenance, and robustness.

Renewables - The Department of Energy should continue to support renewable energy research, development, demonstration and commercialization in its budget. It should look for ways to partner with states which develop their own R&D funds as part of restructuring. A national renewable portfolio standard is a good way to articulate the nation's commitment of sustainable and increasingly benign energy sources. A portfolio standard should be entirely or significantly weighted toward promoting immature technologies in the commercialization phase.

Finally, the biomass production tax credit has not had time or appropriation to do its work. It should be extended and supported for a significant additional period of time.

Energy Efficiency - The Department of Energy should continue to support energy efficiency in its budget. Aside from the many useful programs it now funds, DOE should become more aggressive in promoting market transforming standards for buildings and appliances which will take the pressure off efficiency programs to achieve cost-effective energy efficiency.

We wish to add that the deployment of smart meters and telecommunications offers a great opportunity to take energy efficiency to a higher level of effectiveness. Offering consumers real pricing signals, and providing the opportunity to conveniently regulate demand in response to these signals is probably the most efficient, "customer transforming" way to promote energy efficiency outcomes. DOE should continue to find ways (pilot programs, demonstrations) to support the development and deployment of smart meters if it has any reason to question the ability of the market to deliver this technology in an effective and affordable way.

National Wires Charge - Public benefits generally are at risk in restructuring. There is great pressure to focus only on reducing electric rates, and quite a lot of effort will be necessary to simply maintain the effort which exists in states all across the country to assure energy affordability, energy efficiency deployment, and renewable energy system development. The policies of the United States have supported these categories of initiatives in various ways for many years. While Vermont would want this to continue, we do not want the federal government mandating that states do what some states will not want to do. States' priorities vary, and some of these areas, while desirable from Vermont's perspective, are not really essential to complete the transition to retail choice.

Richard Cowart, Chair of our regulatory agency in Vermont, has suggested a middle position. His proposal for a national wires charge to collect money in states which choose to match this commitment with its own system benefit charge represents a sensible approach to national and state interests in these areas. Anticipating arguments about new taxes and resemblance to the BTU tax proposal, this approach would be voluntary, flexible for use among a series of public benefit programs, and the federal assessment would be limited to \$1 per Mwh (the same as the spent fuel disposal charge on nuclear generation).

This idea is worth considering to assure that government steps up to defend and advance the issues which are important in energy policy and to real people, but which may not have market forces driving them to success.

PUHCA reform - Federal law should modify and, perhaps, eventually repeal the Public Utility Holding Company Act. But real competition should be assured before it is repealed. States and consumers would be ill-served by a world without PUHCA with new and increased incentives to large utilities to merge into even larger utilities before real competition is achieved. For this purpose and, perhaps others, federal law may need to develop or cause to be developed a competitive checklist to verify that competition is in place.

PURPA reform - Federal law should condition the repeal of PURPA on the success of competition. Vermont observes that key provisions of PURPA, transmission access and market access for independent generators, are being addressed in new ways, and that the requirement for the utility to purchase power at avoided cost is an idea which does not fit in the new market. Before this law is put off the books, however, policymakers must be clear that the transition to new market mechanisms is complete.

Nuclear waste - Federal law should resolve issues regarding interim storage and permanent storage of nuclear waste. This is a stand alone issue, but as a continuing obligation of nuclear station operators, spent fuel represents a future risk which complicates the transition to competition. This uncertainty should be resolved to the best of our collective ability. Vermont supports the legislation passed by the Senate in 1996, though other approaches are possible.

Decommissioning and nuclear safety - The NRC has an invitation for comments on these issues, and Vermont intends to make comments. Federal law on safety is clear and we would only suggest that any legislation reaffirm the sense of Congress that the NRC must be a tough, fair regulator of nuclear power stations regardless of the market circumstances in which those stations operate.

On decommissioning, we are considering the merits of mandating accelerated funding of decommissioning obligations to mitigate any perceived increase in risk from a more competitive wholesale power market and retail choice. US DOE should consider this as well. In addition, we understand that the US NRC is troubled by the possible shortcoming in regulations concerning the definition of a utility in regard to decommissioning funding requirements. Without an assured cash flow, some nuclear station owners may not be a "utility" under the meaning of these regulations and may be required to make more onerous arrangements for decommissioning fund surety. This could have significant financial and reliability effects nationwide. Vermont has no conclusion to offer on this issue, but we urge the US DOE to consider the issue, and Vermont would be pleased to assist the DOE in its deliberations if asked.

Air Quality (New source performance standards) - Federal law should eliminate the exception on air quality standards granted to power generating facilities which pre-date the Clean Air Act of 1970. If the generation market is to be fully and fairly competitive, these facilities must not have an advantage over units which have spent the capital necessary to achieve modern NOx standards. And, equally important, the policy of allowing these older units to compromise efforts to meet ambient air will frustrate the mission of the Clean Air Act and its amendments. It is time to face up to this and apply what we know about pollution and pollution control to power generation without exception.

The Council for Environmental Quality has articulated a plan where the key federal stakeholders, EPA, DOE and FERC, each have clearly articulated roles to assure that an outcome of competition in electric markets is not degraded air quality. States, especially northeastern states (in the Ozone Transport Region), will rely on each of these federal stakeholders. It would be appropriate for federal law on restructuring applied some rigor to how these agencies will fulfill their responsibilities set out in the CEQ plan.

Vermont would expect that if new source performance standards became ubiquitously applied nationwide, then the pressure on DOE to track the air quality outcome of competition would be reduced significantly.

Beyond NOx, there are other pollutant from power generation which contribute to troubling health effects. Toxics, particles: all the subsets of these categories which need controls for health reasons will need to mix new market ideas with command and control methods where appropriate.

Information - Energy policymakers at all levels rely on a vast amount of information to make judgments about policy alternatives, to evaluate the actions of regulated companies, and to forecast the future. As energy is a primary factor of production of our economy, it is clearly within the interest of government to take steps to assure that adequate information is

available to enable assessment of energy supply security and energy price stability.

The onset of competition will cause some energy industry stakeholders to be careful with information. Some historically public information may now be considered by some to be proprietary. In some cases, these changes in perspective match the changes in the marketplace and are appropriate. In other cases, stakeholders take an expansive view which could be anti-competitive and also dangerous in its impact on policymakers and their ability to understand energy markets.

Because the ocean of information is so vast, it is hard to list all the pieces of information which ought to remain public, so Vermont suggests that a study group, including EIA, FERC and SEC, with participation from state regulators and energy offices evaluate how we use energy information today, anticipate how competition might effect the availability of key information, and suggest any actions which may assure that the public interest is protected.

Power Marketing Associations - The new marketplace must be fair. Some parts of the country include dominant players which are not subject to regulation. This condition will be a barrier to the formation of robust competition. The federal government should act to remove or reduce the ability of these key players to avoid being market competitors

Richard P. Sedano
Commissioner
Vermont Department of Public Service
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