



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

Response to the Utah Public Service Commission

**Request for Comments
on Consumer Protection
Report to Electrical Deregulation
and Customer Choice Task Force
Docket No. 96-999-001**

**Comment of the Staff of the
Bureau of Consumer Protection of
the Federal Trade Commission(1)**

I. Introduction and Summary

The staff of the Bureau of Consumer Protection of the Federal Trade Commission (FTC) appreciates this opportunity to respond to the Utah Public Service Commission's June 8, 1998 invitation to comment on the consumer protection issues set forth in S.B. 67. Utah is joining a growing number of states considering regulatory reforms to bring the benefits of competition (lower prices, improved service, and innovation) in the electric industry to its citizens and businesses. These benefits, however, will not be realized without strong consumer policies in place that recognize the unique consumer issues involved in a competitive electric industry.

The FTC is an independent administrative agency responsible for safeguarding the interests of consumers and maintaining competition. The staff of the FTC has a longstanding interest in regulation and competition in energy markets, and has submitted comments concerning competition issues to the Federal Energy Regulatory Commission (FERC), as well as several state and regional regulatory bodies. The staff actively monitors industry and legislative developments in the electric industry at the state and federal level that will affect consumers' interests. The FTC's mission includes ensuring truth in advertising and enforcing regulations in the areas of advertising, marketing, and credit practices in many industries. Its primary interest in this area is to prevent and to remedy unfair or deceptive trade practices aimed at consumers.

The Utah Public Service Commission (UPSC) has invited comment on eight topic areas identified by S.B. 67, for its Report on Consumer Protection (Report) to the Electrical Deregulation and Customer Choice Task Force. This comment addresses two of these topics: (1) educating consumers about the impact of electricity restructuring; and (2) regulation of electric service providers (ESPs), such as power marketers. We address six issues that fall within those two topic areas: information disclosures; billing, credit, and collection practices; customer privacy; utility affiliate rules; licensing; and consumer education. It is not the staff's intent to recommend policy decisions or outcomes in these particular areas, but rather to assist the UPSC in those consumer protection areas in which the staff has expertise.

II. Consumer Information Disclosures

Following deregulation of the electricity industry, advertising will be one of the primary sources from which consumers obtain information about the products they will choose to purchase. Advertising, however, does not always provide consumers with all the information they need to make an informed choice. In competitive electricity markets, consumers are likely to face a wide variety of price offers, contract terms, and environmental or service claims that may prove to be confusing, difficult to evaluate, or even misleading.

One approach to this problem is to standardize some of the information that ESPs disclose to consumers in their advertising -- similar to what has been done with nutrition labeling on food, care labels on clothing, or energy efficiency labels on appliances. In fact, consumers in an electricity competition pilot project in New Hampshire complained about the difficulty of comparing competing products when ESPs were allowed to present whatever information they chose about the product in any format they chose.(2) Standardized product labeling can alleviate this common consumer complaint.

Various regulatory groups have recommended developing appropriate uniform disclosure requirements as a means to facilitate customer choice, enhance customer protections, and enhance market efficiency.(3) Laws or regulations calling for some degree of mandatory uniform disclosures have been enacted in a number of states, including California, Maine, Massachusetts, Michigan, Nevada, New Hampshire, Pennsylvania, and Vermont. Other states are considering disclosure requirements as well. In addition, various bills introduced in Congress propose disclosure requirements, and on March 25, 1998, the Department of Energy announced a proposal for federal legislation that would include uniform labels for electricity. Although existing FTC laws and rules prohibiting unfair or deceptive claims would govern electricity advertising, uniform disclosures may provide an important additional consumer benefit in a new market where consumers have had no prior experience with choice.

Uniform disclosure, however, raises many difficult issues: for example, determining which types of information are important to consumers in choosing a supplier. Information that may be suitable for uniform disclosure includes price, price variability, environmental attributes of power supply (generation source and emissions characteristics),(4) or contract terms (minimum length, termination fees, transfer charges, etc.).

Another issue when mandating uniform disclosure rules is the format for disclosure of information. The chosen format should present information simply and clearly, and take a minimum of time to review and comprehend. A format that is overly restrictive, or that prohibits any additional claims, may place unconventional or innovative products at a competitive disadvantage. The California Energy Commission recently proposed a format for mandatory fuel source disclosures, and in January 1998, the National Council on Competition and the Electric Industry proposed "Uniform Consumer Disclosure Standards for New England," that included a sample label format.(5)

If disclosures are standardized, the UPSC must determine whether they will be mandatory (required of all marketers regardless of claims made) or claims-based (required of marketers only when certain claims are made). One consumer study suggests that when standard disclosures are provided by all marketers, consumers were more likely (1) to feel they had adequate information to make a choice, (2) to correctly identify the lowest priced product among several samples, and (3) to correctly identify the product with the least environmental impact among sample products.(6) If disclosures are mandatory, the UPSC may wish to consider allowing EPSs to use a "default" label, and to determine the default label's content.(7) Another consideration is the placement of standardized disclosures -- that is, whether they must appear only in advertising that gives consumers the opportunity to select an ESP, or in all print advertising, or whether some alternative form of disclosures should appear in small format print advertising and in non-print media.(8)

Each of these issues raises cost concerns as well. Mandatory disclosure requirements will impose costs on companies subject to them. The cost of tracking and maintaining the data necessary for the disclosure will vary depending on the type of information mandated and the degree of precision required for the information disclosed. It is likely that these costs, as well as the actual costs of making the disclosures, will be passed on to consumers. Therefore, the cost of requiring disclosures should be weighed against the benefit when making a policy decision.

III. Billing, Credit and Collection Practices

The UPSC's January 1, 1998 Report to the Electrical Deregulation and Customer Choice Task Force on Unbundling Electricity-Related Services ("Unbundling Report") listed various Customer Accounting functions that "may be amenable to competitive provision but only between the supplier and the provider of these services," and recommended further study. Regardless of whether some or all of the customer accounting functions are performed

directly by ESPs or by regulated utilities on behalf of ESPs, several billing practices (including "slamming" and "cramming") as well as credit and collection practices should be addressed.

"Slamming," or changing a customer's service provider without authorization, has been a growing concern in the telecommunications industry. This same unauthorized billing practice could occur in a competitive retail electricity market. Provisions to address this problem may include requiring utilities to obtain independent confirmation from the customer before switching service; requiring that the consumer's authorization to change an ESP be in writing, with or without a prescribed form; requiring that a written contract be sent to the customer within a set number of days after any ESP change is made; and allowing customers the right to cancel contracts with an ESP within a short time after requesting a change.⁽⁹⁾

More recently, "cramming" also has become a concern in telecommunications -- that is, charging customers on their phone bill for products or services they have not purchased. Cramming often leaves the customer risking discontinuation of service if the bill is not paid and dealing with a company other than the seller to resolve disputes. The UPSC also might address whether billing formats should be required to show charges separately for regulated and non-regulated services, to show customer service numbers for utilities and ESPs, or to show other information (such as price per kilowatt hour (kWh), or total or seasonal kWh usage).

With respect to both credit and collection practices, existing federal law (and presumably state law) governing, for example, fair credit opportunities, credit reporting, and debt collection, will extend to ESPs. Credit and collection practices are particularly important in the sale of electricity, where companies may have the power to create significant obstacles to obtaining service, or to use disconnection of service as leverage in disputes. The UPSC should ensure that ESPs are subject to appropriate rules governing their ability to demand deposits or advances, to grant extensions of credit, and to order discontinuance of service for non-payment.

IV. Customer Privacy Concerns

The Unbundling Report recommended that all ESPs be given access to "customer information obtained through billing, metering, payment collection and processing" in order to avoid giving "a competitive advantage to the incumbent." This recommendation brings information privacy concerns to the forefront. In June 1998, the FTC published "Privacy Online: A Report to Congress," dealing with privacy issues on the Internet.⁽¹⁰⁾ The principles announced in that report also may be applicable to the wealth of information that electric utilities and ESPs are likely to maintain about their customers. The report announces that "fair information practice principles" include:

- (1) Notice/Awareness (consumers should be given notice of an entity's information practices before information is collected from them);
- (2) Choice/Consent (consumers should be given a choice about how their information is used);
- (3) Access/Participation (consumers should be able to view data about themselves and to challenge its accuracy and completeness);
- (4) Integrity/Security (companies should take reasonable steps to assure and maintain the accuracy and timeliness of data and to prevent its loss and unauthorized use, access, destruction or disclosure); and
- (5) Enforcement/Redress (consumers should have a mechanism for enforcement of privacy rights, whether self-regulatory, private or government action).

The UPSC may wish to consider applying these principles to ESPs operating in Utah.

V. Utility Affiliate Rules

If existing regulated utilities are allowed to continue selling electricity generation through subsidiaries or other affiliates, safeguards may be necessary to govern the ESP's advertising practices. Safeguards address the concern that an unregulated affiliate's use of its regulated parent utility's name or logo is a particularly difficult anticompetitive practice to police and may present the possibility for consumer deception. Both of these concerns were addressed extensively in the staff's recent comment to the Public Utilities Commission of Texas. This comment can be accessed from the FTC's website (www.ftc.gov/be/advofile.htm (V980013)).

VI. Licensing or Registration of ESPs

As part of regulating ESPs, the UPSC may wish to consider imposing a licensing or registration procedure to further safeguard consumers. Such programs can vary from requiring simple filing of basic information such as company name, address, telephone number, and registered agent information, to imposing fees, bonding requirements, access to books and records, and evidence of financial soundness.⁽¹¹⁾ A licensing or registration plan also may serve as a vehicle for enforcing standards of conduct imposed on ESPs in the state, including consumer protection standards, through forfeiture or prohibition on sales.⁽¹²⁾

VII. Consumer Education

Consumer education is a vital consumer protection tool in a new retail market, and for the effective functioning of the electricity marketplace. Consumer surveys indicate that consumers' knowledge is very low about electricity usage, unit cost and fuel sources,⁽¹³⁾ as well as about deregulation in general.⁽¹⁴⁾ The FTC has not yet developed consumer education materials specifically for electricity, but has published generally applicable consumer materials, such as information on consumer credit and credit reporting, debt collection practices, and telemarketing. The UPSC may find it helpful, in any consumer education materials it may develop, to draw on or reference some of these general materials. The staff also would be pleased to assist or cooperate in the development of new materials.

VIII. Conclusion

Consumer protection issues in a newly deregulated industry, such as the electricity industry, play an important role in ensuring that consumers realize the full benefits of competition. Accordingly, we recommend that the UPSC consider including discussion of the following consumer protection issues in the Report: consumer information disclosures; billing, credit, and collection practices; customer privacy concerns; utility affiliate rules; licensing of ESPs; and consumer education.

Respectfully submitted,

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Bureau of Consumer Protection
Federal Trade Commission

July 15, 1998

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1. This comment represents the views of the staff of the FTC's Bureau of Consumer Protection. They are not necessarily the views of the FTC or of any individual Commissioner. Inquiries regarding this comment should be directed to Gina Schaar Howard by telephone at (202) 326-2982 or by e-mail at "ghoward@ftc.gov."
2. "Information Disclosure for Electricity Sales: Consumer Preferences from Focus Groups," Regulatory Assistance Project (March 19, 1997). A copy can be obtained from the Regulatory Assistance Project's website (www.rapmaine.org).
3. The National Association of Attorneys General (NAAG) adopted a resolution in March 1997 supporting "the establishment of appropriate and adequate consumer safeguards [in] . . . the restructured retail electricity marketplace," including uniform disclosures in plain language of "price, duration of contract, quantities, and other material terms." The National Association of Regulatory Utility Commissioners (NARUC) and the New England Governors' Conference, Inc. also have issued resolutions supporting states' adoption of mandatory, uniform disclosure standards (NARUC in November 1996 and the Governors' Conference on June 3, 1997).
4. The feasibility of requiring disclosure of fuel source may depend on availability of tracking mechanisms through which sources of supply may be substantiated and verified. Likewise, reasonably reliable data for emissions must be available to substantiate any required disclosures. Other questions would be whether fuel source and emissions data would be based on historical or projected information, and the degree of precision required for such data.
5. The California proposal is available on the California Energy Commission's website (www.energy.ca.gov); the New England proposal is available on The Regulatory Assistance Project's website (www.rapmaine.org/disclose.html). The FTC staff takes no position on the merits of these proposals; they are referenced for information purposes only.
6. "Label Testing: Results of Mall Intercept Study," National Council on Competition and the Electric Industry (April 1998). A copy of this report can be obtained from the National Council on Competition and the Electric Industry's website (eetd.lbl.gov/nationalcouncil/publications.html).
7. For ESPs that do not wish to incur the expense of maintaining and substantiating information for the label, the UPSC may wish to allow ESPs to report system average information or to indicate that ESP-specific information is not being supplied.
8. For example, some contract terms may be more suitable for required disclosure in a contract document, whereas in advertising, it may be advisable to require that only the one or two most important terms be disclosed.
9. For example, California, Illinois and Massachusetts have enacted anti-slamming provisions in their electricity restructuring legislation. See Cal. Pub. Util. Code § 366.5; 815 ILCS § 505/2EE; Mass. Ann. Laws, Ch. 164 § 1F(8)(a).
10. The FTC's Privacy Online Report is available from the FTC's website (www.ftc.gov/privacy/reports.htm).

11. In designing a registration or licensing scheme, the cost and time required for an ESP to become registered or licensed should be reasonably limited, to avoid barriers to market entry and increased prices passed through to consumers.

12. The California PUC, in February 1998, obtained a consent order against Boston-Finney, a registered electric service provider that was charged with operating an allegedly illegal multi-level marketing scheme, with allegedly dishonest, fraudulent and deceptive practices, and with lacking the financial and operational capabilities to provide service. The order required Boston-Finney to cease operations and effectively put the company out of business in California.

13. Winneg, et al., "Summary Report: Baseline Survey -- Consumer Knowledge, Practices and Attitudes, Electric Utility Deregulation and Consumer Choice," National Council on Competition and the Electric Industry (Jan. 1998).

14. Edison Electric Institute public opinion research for California (Sept. '97), Maine (July '97), Massachusetts (July '97), Vermont (July '97), Connecticut (July '97), Rhode Island (July '97), New Hampshire (July '97), Illinois (March '98), and Missouri (April '98).