

Universal Service

Emerging Competition in the Electric Industry

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A Staff Analysis

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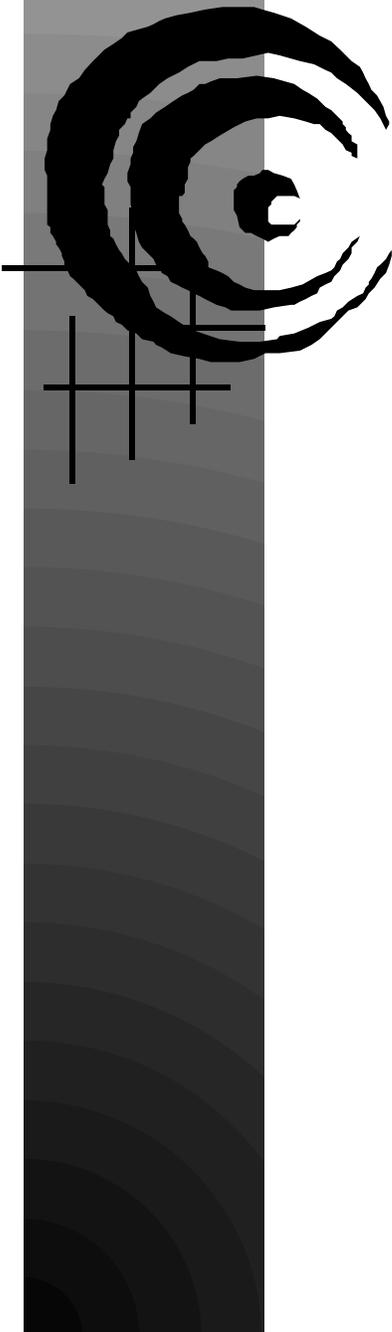


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GLOSSARY OF TERMS

Aggregator - A Person that combines End-Use Consumers into a group and arranges for the acquisition of Competitive Electric Services without taking title to those services.

Alternative Provider – Providers of Competitive Electric Services that are not Incumbent Providers.

Assigned Delivery Service Area - A geographic area designated by the Board within which a Delivery Service Provider has the exclusive right to provide Delivery Services.

Bilateral Contract - A direct contract between a purchaser and a seller, including an intermediary.

Board - The Utilities Board within the Department of Commerce created in Section 474.1 of the IOWA CODE.

Bundled Electric Service - Electric services provided as a package rather than as unbundled individual services.

Competition – A market that has many potential buyers and sellers and no one seller or group of sellers of a commodity or service is able to control the price for that commodity or service.

Competitive Electric Services - Competitive Power Supply Services and all other electric energy services sold at retail in Iowa on a competitive basis.

Competitive Electric Service Provider - A Person providing Competitive Electric Services in Iowa.

Competitive Power Supply Services - Electric Demand/capacity, Energy and Ancillary Services sold at retail in Iowa.

Consumer-Owned Utility - A Utility in which the End-Use Consumers own the Utility, either directly or through a unit of government. Consumer-Owned Utilities, which include Municipal Utilities and Rural Electric Cooperatives, operate on a not-for-profit basis and their rates and policies are set by local elected or appointed governing bodies.

Control Area - An electrical system bounded by interconnection (tie line) metering and telemetry. It controls its generation directly to maintain its interchange schedule with other Control Areas and contributes to frequency regulation of the interconnection.

Control Area Operator – The Person that performs the scheduling, dispatching, system support, balancing and financial settlement functions related to the effective operation of the Control Area.

Cost-Based Rates - Electric rates (either wholesale or retail) set on the basis of a utility's actual Cost of Service. A regulatory body reviews the various cost inputs, and sets rates to recover the legitimate costs.

Cost of Service - The total cost of providing Utility service to the system or to a group therein (the latter is commonly referred to as an allocated cost of service). The cost components include operating expenses, depreciation, taxes, and a Rate of Return adequate to service investment capital.

Default Provider - The provider of Competitive Electric Services to an End-Use Consumer that has not chosen an alternative provider.

Delivery Service - The transportation of electricity from one point on a Delivery Service Provider's Grid to another point on that Grid.

Delivery Service Provider - A Person that provides Delivery Service in Iowa.

Demand - Electric power measured in kilowatts.

Deregulation - The elimination of regulation from a previously regulated industry or sector of an industry.

Disconnection of Service – Removing an End-Use Consumer from the Grid.

Distribution Service - Delivery Service provided by facilities that are subject to the jurisdiction of the Board, board of an Iowa rural electric cooperative association, or city council or board of trustees of a municipal utility.

Electric Cooperative - An electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere. An Electric Cooperative shall also include an Incorporated City Utility Provider.

Electric Industry Restructuring - The process by which End-Use Consumers have choice in many electric services as a result of Competition replacing price regulation of Competitive Power Supply Services and other electric energy services sold at retail in Iowa, with the exception of Delivery Services and Control Area Operations.

End-Use Consumer - A Person that consumes or uses Delivery Service at retail or Competitive Electric Services in Iowa.

Energy - Electric energy measured in kilowatt-hours (kWh).

Federal Energy Regulatory Commission (FERC) – Federal agency that regulates wholesale power and Transmission Service.

Grid - The interconnected assets (substations, poles, wire, transformers, etc.) that are used for the transportation of electricity. This includes assets used in Transmission or Distribution Service.

Incumbent Provider - The provider of Bundled Electric Service to an End-Use Consumer on the day prior to the first End-Use Consumer having access to Competitive Electric Services. All successor companies of the Incumbent Provider shall fall under this definition.

Low-Income Fund - A fund to be set up to pay for some or all of the costs of Competitive Electric Services and energy efficiency measures for those who cannot afford to pay for these services.

Municipal Utility – A city enterprise engaged in the production, delivery, service, or sales of electric energy established pursuant to Chapter 388. Municipal Utility includes a combined utility system.

Non-Bypassable Charge - A charge that will be assessed to an End-Use Consumer within the Delivery Service Provider's Assigned Service Area, regardless of whether that Consumer continues to purchase Delivery Service from that Provider.

Obligation to Connect - The duty of the Delivery Service Provider to provide an End-Use Consumer within an Assigned Service Area with a connection to the Grid. The Obligation to Connect does not include the obligation to provide Competitive Electric Services.

Provider of Last Resort - The designation of a Person responsible for providing Competitive Electric Services if no other Person willingly seeks to provide such service.

Public Benefits Charge – A non-bypassable fee to generate sufficient revenues to ensure continued funding of public purpose programs in a competitive market.

Redlining - It is the practice of a CESP choosing not to serve an end-use consumer or group of end-use consumers because of poor location and/or low profit margins.

Residential End-Use Consumer - A Residential End-Use Consumer for both urban and rural areas is defined to include each separate house, apartment, flat, trailer, or other living quarters, including facilities for meal preparation and sleeping occupied by a person or persons constituting a distinct household and using energy for general illumination, heating, or for operating household appliances.

Small Non-Residential Customer – An End-Use Consumer consuming less than 25,000 kilowatt hours of energy in the year preceding day one of choice.

Standard Offer Service – Bundled Electric Service subject to legislative and/or regulatory price constraints that is available to Residential and Small Non-Residential End-Use Consumers.

Transmission Services – Delivery Service provided by facilities that are subject to the jurisdiction of the Federal Energy Regulatory Commission.

Universal Service – The concept that all End-Use Consumers should be guaranteed the right to service.

Utility – A Person owning or operating facilities for furnishing electric services to the public for compensation and subject to rate or service jurisdiction of the Board pursuant to chapter 476.

EXECUTIVE SUMMARY

The Iowa Utilities Board Action Plan to Develop a Competitive Model for the Electric Industry in Iowa charged the Universal Service Ad Hoc Group with addressing the following issues: 1) end-use consumer access to service, 2) provider of last resort, 3) consumer protection, and 4) low-income assistance programs.

Customer Access to Service

The “Customer Access to Service” section of the report includes four sub-issues: security deposits, fees, obligation to connect, and disconnection/reconnection procedures. The current Iowa statute and/or board rules address how utilities handle security deposits, late fees, and disconnection/reconnection procedures. Security deposits ensure payment if an end-use consumer has a delinquent bill; late fees are used to encourage timely payments; and disconnection/reconnection procedures, at a minimum, exist to protect an end-use consumer from losing electric service without notice from the utility.

Policymakers may want to consider whether these rules should continue to be applied to the utilities as they move into a competitive market place. If it is determined there is a continued need for rules on deposits and late fees, the policymakers may wish to extend these rules to include competitive electric supply providers (CESPs) who will also be participants in the market. It is questionable whether the disconnection/reconnection rules should also be extended to include CESPs.

Research on other states’ activities supports only allowing the delivery service provider to disconnect an end-use consumer; the CESP may only be allowed to terminate generation service.

Currently the investor- and consumer-owned utilities are also required implicitly, by statute, to serve all end-use consumers within their assigned delivery service areas. During the transition into a competitive market and beyond, policymakers may wish to

consider obligating the delivery service provider to connect all end-use consumers to the grid in order to ensure universal access to the grid.

Switching fees are the costs incurred in switching an end-use consumer from one CESP to another. Policymakers may want to consider what policies may be needed to deal with switching fees as the market becomes restructured.

Provider of Last Resort

If an end-use consumer does not select a CESP, chooses a CESP but does not get picked up as an end-use consumer, or uses a CESP who for whatever reason does not provide the service when needed, there needs to be a backup service provider called a default provider/provider of last resort. Policymakers may want to consider designating the local delivery service provider as the provider of last resort and the default provider, at least during the transition to a competitive market.

Customer Protection

Customer protection has always been a critical issue in a monopoly environment given the importance of having electrical service for health and safety reasons. However, there is additional concern for protecting consumers from abuses that may develop as the electric market is opened up to competition. Potential abuses could include slamming, redlining, and service termination without notice. These and other issues are addressed by the teams of the Action Plan. This report addresses service termination without notice and contract provisions. Policymakers may want to consider whether requiring notice prior to terminating service, granting end-use consumers rescission rights, or requiring notice of renewal terms are appropriate customer protections in a restructured environment.

Low-Income Assistance Programs

Federal funding currently exists for low-income assistance programs in Iowa such as LIHEAP and emergency assistance programs. Because future funding of these

programs is uncertain, states reviewing electric restructuring are looking into establishing assistance programs or enhancing existing programs. One option used to fund the program is a universal system benefit charge that is a wires charge based on usage (per kWh). In Iowa, policymakers may want to also assess the need for new or expanded state-funded programs.

INTRODUCTION

UNIVERSAL SERVICE IN ELECTRICITY

The Iowa Utilities Board Action Plan for Electric Restructuring (Action Plan) concluded “the existing monopoly markets for electric production and delivery have resulted in public benefits related to universal service and public purpose programs.” Universal service¹ mechanisms existing under the current monopoly system include: 1) the obligation to serve all end-use consumers which extends to all bundled electric services; 2) lowering barriers to service (rules on when service can be denied); 3) shut-off safeguards; 4) averaged rates (this is to ensure that small end-use consumers who live in higher cost areas are charged the same rates as those end-use consumers living in lower cost areas); and 5) federal assistance for low-income consumers.

The Board’s Action Plan charged the Public Benefits Team (of which the Universal Service Ad Hoc Group is a part) with determining a way to ensure universal accessibility to electric service in Iowa. This is done by “designating a provider of last resort both during the transition to competition and once a competitive market is established; investigating an appropriate means of compensating the provider of last resort (e.g., state-sponsored universal service fund); and defining competitively neutral policies and procedures for funding universal service in Iowa.” (Action Plan, p. 10).

Consistent with this charge, this report addresses the following issues:

- Customer access to service
- Provider of last resort/default provider
- Consumer protection
- Low-income assistance programs

¹ Universal service ensures all end-use consumers have access to electric service without regards to location or income.

Attached at the end of this report is Appendix A containing a summary of the various state and federal activities with respect to these issues and Appendix B, a summary of the Advisory Group's comments on this report.

CUSTOMER ACCESS TO SERVICE

I. SECURITY DEPOSITS

Security deposits are often required of tenants of rental properties and for utilities' services. Iowa rules allow a utility to require a deposit from any customer. Normally, however, a deposit is only requested if the end-use consumer has poor payment history or the customer is new to the utility. Deposits are intended to guarantee payment.

Current Iowa rules provide that each utility may require a deposit from any customer or prospective customer. Each utility must allow a person other than the customer to pay the customer's deposit. In lieu of a cash deposit, the utility may accept the written guarantee of a surety or other responsible party as surety for an account. Upon termination of a guarantee contract or whenever the utility deems the contract insufficient as to amount or surety, a cash deposit or a new or additional guarantee may be required for good cause. A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate.

This issue is being addressed by other states that are investigating electric industry restructuring. Typically states are not reviewing the continued need for deposits in a restructured environment but, instead, are considering how to apply deposit rules to CESP's or the provider of last resort. For example, Massachusetts' law prohibits CESP's from charging deposits; New York has proposed rules which would allow the provider of last resort to collect a deposit when there is an outstanding past due bill from another provider; and Pennsylvania's rules provide the CESP must comply with credit rules that require service without deposit if the end-use consumer has good payment/utility history.

In a competitive environment, the CESP may not wish to collect a deposit or require a minimal amount of deposit in order to prevent end-use consumers from selecting

another CESP. The market most likely will dictate the amount of deposit, if any, required by the CESP.

Flexible security deposits rules should continue to be applied to the delivery service providers the electric industry moves to a competitive environment. Policymakers may want to consider extending these rules to all CESP providing service to end-use consumers in Iowa.

II. FEES

A. LATE FEES

In order to penalize and discourage late payments, utilities have assessed a charge for late payment if the payment is not received on or before the billing due date. Credit card and mortgages companies also charge late fees for the same reason.

In Iowa rules, the late payment charged by the utility may be no more than 1.5 percent of the past due amount per month. Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. If payment is received within 20 days of the date the bill is rendered, a late payment charge may not be assessed. (IOWA ADMIN. CODE 199-20.4(12))

The need to encourage timely payments should not change in a restructured electric industry. Delivery service providers will likely wish to continue exercising their right to penalize their end-use consumers for making late payments. However, delivery service providers will not be the only entity billing electric service end-use consumers. CESP will be billing end-use consumers as well. In fact, in cases where the end-use consumer desires one bill, CESP may be billing end-use consumers for both generation and delivery (i.e., distribution and transmission). If policymakers determine that late fees rules should still exist during the transition period and beyond, consideration could be given to extending these rules to include CESP.

B. SWITCHING FEES

If an end-use consumer chooses to switch from one CESP to another CESP, there could be administrative costs associated with switching. The entity, whether it is the delivery service provider or a default provider, may need to charge an end-use consumer a switching fee to recover these costs. This has become an issue as the electric industry is being restructured.

The policymakers may be interested in assuring the authority to review and approve the costs associated with switching end-use consumers from one CESP to another.

III. OBLIGATION TO CONNECT

All Iowa investor- and consumer-owned utilities are currently obligated, implicitly by statute, to serve all end-use consumers in their respective assigned delivery service areas. Under the current system, three components of service (i.e., generation, transmission, and distribution) are bundled into one rate. In order for the restructured system to work where generation is offered competitively, the delivery service provider should remain obligated to connect all end-use consumers in its assigned delivery service area on a nondiscriminating basis. All end-use consumers in a specific service territory will continue to be captive end-use consumers to the incumbent delivery service provider for connection unless distribution becomes competitive in the future. Without this obligation, some end-use consumers would not be able to receive electric service even if CESPs were willing to provide them these services.

All researched state reports and legislation are consistent in obligating delivery service providers to connect all end-use consumers in their assigned delivery service areas at reasonable terms and in a nondiscriminating fashion. However, some states (e.g., California, Maryland, Pennsylvania, and Texas) are still requiring the delivery service

provider to serve² its end-use consumers. This language is needed if the delivery service provider is expected to provide more than distribution services such as providing standard offer service³ as the default provider. In this instance, the delivery service provider would not only provide distribution services but also procures the energy needed to serve the end-use consumers who choose to stay with the incumbent provider or who do not choose to select another CESP.

Policymakers may want to consider whether the delivery service provider should continue to be obligated to connect all end-use consumers to the grid on reasonable terms and on a nondiscriminatory basis. Consideration should also be given to requiring the delivery service provider to serve its end-use consumers at least through the transition into a competitive market, especially if the delivery service provider is designated as a default provider/provider of last resort.

IV. DISCONNECTION AND RECONNECTION PROVISIONS

Utilities have several reasons for wanting to disconnect a customer. For instance, if the customer's use of the equipment adversely affects the utility's equipment; the condition of the customer's premises is determined to be hazardous by the utility; or there has been tampering with the utility's equipment. These are examples of the events listed in Iowa's rules that would allow a utility to discontinue service without notice.

In the case where there is nonpayment of a bill, the utility is required to make a reasonable attempt to affect collection. Alternatives to disconnection are provided in the rules as well as protections for customers under certain circumstances. Examples of alternatives include payment arrangements, budget billing, payment extensions, and

² To be required to serve an end-use consumer means the delivery service provider would continue to provide distribution and transmission services to the end-use consumer as well as to procure the generation needed to supply that end-use consumer's load requirements.

³ Standard offer service is the traditional "bundled" service offering that electric utilities have historically provided end-use consumers in designated monopoly areas at regulated rates.

arrearage forgiveness. Payment extension and arrearage forgiveness alternatives are currently not available in Iowa.

Payment arrangements - To avoid disconnection, an end-use consumer having problems paying the electric bill can make a payment arrangement with the utility where the end-use consumer can pay arrearage in future installments.

In Iowa, the rules allow the customer and utility to enter into a “payment agreement.” The utility needs to consider: 1) reasonableness (i.e., household income, ability to pay, size of bill, special circumstances) and 2) terms (spreading payments evenly over at least 12 months for current customer and disconnected customer and spreading payments evenly over at least 6 months for potential customers).

Budget billing - “The level payments made throughout the year that allow the customer to defer costs of high energy consumption until later months when energy consumption is lower.”⁴

Payment Extension - This allows customers to pay their bills at the time they receive another form of payment such as the receipt of social security, pension, or other monthly income.

Arrearage forgiveness - Low-income customers who have demonstrated a “good-faith” effort to pay their bills will be forgiven of arrearage.

There are also restrictions imposed on the utility from disconnecting a customer. For customers eligible for low-income home energy assistance programs or weatherization assistance programs, a disconnection cannot take place during the period from

⁴ U.S. Department of Health and Human Services, “LIHEAP [Low-Income Home Energy Assistance Program] Report to Congress for Fiscal Year 1990 (Washington, DC: U.S. Department of Health and Human Services, 1991), p. 145.

November 1 to April 1. Other restrictions include health and hardship reasons. If a customer or a person living in a customer's home has a serious health problem that would be endangered if the electricity were shut off, the disconnection is delayed by thirty days. Within that thirty days, a payment agreement must be arranged.

In this section, disconnecting an end-use consumer means physically disconnecting the consumer from the meter. Reconnection procedures would have to be implemented in order to get the end-use consumer attached to the grid for service again. Most of the states researched have legislation prohibiting the CESP from disconnecting the end-use consumer's service. Only delivery service providers have the authority to disconnect and reconnect service. In addition, New Hampshire's law prohibits the distribution and transmission company from attempting to collect bills owed to a CESP as a condition of providing service. Montana's legislation is the exception; it allows the PUC to establish rules on how and when the CESP may disconnect service.

In a restructured electric industry, policymakers may want to consider allowing the delivery service provider to disconnect an end-use consumer from the grid for non-payment of delivery services and for not designating one or more CESPs to provide either competitive power supply services, electric metering, or electric billing services. End-use consumers failing to designate a CESP could continue to receive power supply services from the control area operator without being billed for them as long as the end-use consumer continued to pay for delivery services, metering, and billing. The load needed to serve small end-use consumers would not be detected by the control area operator.

CESP should be allowed to terminate service to end-use consumers with reasonable notice to the end-use consumer and delivery service provider. However, CESPs should not be able to physically disconnect the end-use consumer from the grid.

Policymakers may want to consider whether current Iowa rules on disconnects/reconnects should still apply to the delivery service provider in a restructured environment. Because of the changes in the electric industry, there should be consideration given to establishing additional rules such as: 1) requiring end-use consumers to designate one or more CESP to provide competitive power supply services, electric metering, or electric billing services; 2) prohibiting the delivery service provider from disconnecting an end-use consumer from the grid for nonpayment to the CESP; 3) requiring all CESP to notify the control area operator when their end-use consumers' generation service has been terminated; and 4) prohibiting the CESP from physically disconnecting service for nonpayment of generation charges. CESP should be allowed to terminate the business relationship with their end-use consumers for nonpayment.

PROVIDER OF LAST RESORT

The provider of last resort refers to the entity charged with serving end-use consumers who would not receive service based solely on market conditions. In addition to designating a provider of last resort, most states have gone on to designate a default provider. Although no consensus exists among the states, default provider commonly refers to the provider of standard offer service. Standard offer service generally applies to all end-use consumers who do not choose a CESP. Kansas, Maine, Massachusetts, Montana, New Hampshire, and New York have addressed the issue of who should serve end-use consumers when a CESP fails to serve.

Staff reviewed materials including legislation, commission orders, and staff reports from eighteen states that addressed the issue of provider of last resort and default provider. The states differ in the degree to which the service obligation is defined for the provider of last resort and/or default provider and whether the obligation is for the transition period or an indefinite obligation.

The majority of states specifically require the delivery service provider or a designated delivery service provider to serve as provider of last resort and/or default provider at least during the transition (i.e., California, Delaware, Kansas, Maryland, Massachusetts, Montana, Nevada, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, and Vermont). Post-transition, several states left the option available for a competitive bid (Delaware, Maryland, Massachusetts, Missouri, Nevada, New Hampshire, Pennsylvania, Vermont, and Rhode Island) or a risk pool (Maryland) for the PUC to authorize if it is deemed to be in the public interest. A competitive bid approach includes reviewing and selecting an interested competitive CESP for the role of provider of last resort and/or default provider. The review would be based on specific criteria including price, performance, reliability, financial solvency, etc.

A risk pool groups high-risk end-use consumers and allocates them to all CESPs on a proportionate basis. This results in a sharing of "high risk" end-use consumers among all CESPs.

In designating the default provider, a trade-off exists between jump-starting competition and ensuring end-use consumer satisfaction. Competition for default provider status in Iowa could provide the impetus for a competitive market. However, if the incumbent provider fails to win the bid to be default provider, end-use consumers would be forced to take service from a lesser known entity unless they make a conscious decision to stay with their incumbent provider. If the incumbent provider becomes the default provider, end-use consumers can effectively choose not to choose and remain with an electricity provider they are familiar with.

If the provider of last resort remains with the regulated entity, which is the delivery service provider, costs associated with being the provider of last resort should be determined and recovered through the ratemaking process. These costs should be recovered through the distribution charge and assessed to all end-use consumers. In the case of CESP default, penalties may need to be imposed as determined by the

Board. Penalties may discourage CESP's from exiting the market without notice to their end-use consumers.

In developing any restructuring legislation, the policymakers may want to consider establishing the local delivery service provider as the designated provider of last resort and the default provider at least through the transition to a competitive market. The responsibilities of each are defined below:⁵

Provider of Last Resort: The designated provider of last resort should: 1) be required to provide service to all end-use consumers in its assigned delivery service area who cannot obtain power in the open market; and 2) be established as an emergency supplier of electricity in instances when the competitive CESP fails to supply electric power for reasons other than end-use consumer nonpayment. When providing emergency services, the designated provider of last resort should be reimbursed at some multiple of costs (to be determined by the Board) by the CESP who should have provided the service. This requirement could be incorporated into CESP licensing requirements.

Default Provider: The designated default provider should be required to provide service to all end-use consumers in its assigned delivery service area who choose not to choose a CESP (under standard offer services).

Policymakers should maintain the discretion and authority to determine when and if appropriate changes in the designation of a provider for each of these services is appropriate and in the public interest.

⁵ Because Massachusetts, New York, and Montana provide the most comprehensive definitions of the service obligations of the provider of last resort and/or default provider, the work of these states provides the basis for the descriptions and requirements for both services.

Policymakers should not be precluded from choosing other options (e.g., competitive bid process, direct assignment, etc.) to establish the provider of last resort and/or the default provider.

CONSUMER PROTECTION

Consumer protection has always been a critical issue in a monopoly environment given the importance of having electric service for health and safety reasons. Examples of current consumer protection rules including end-use consumer notice prior to losing service, shut-off protection for the period November 1 to April 1 (winter moratorium), and shut-off protection for health reasons. Additional consumer protection rules may be needed during the transition into a competitive market and beyond because of the potential for abuses such as slamming and redlining⁶.

Other consumer protection issues include: 1) information disclosure; 2) licensing of CESP; 3) service termination without notice; 4) end-use consumer bill of rights; and 5) contract provisions.

This report covers the issues dealing with service termination without notice and contract provisions. The remaining consumer protection issues are addressed by other teams in the Action Plan.⁷

I. SERVICE TERMINATION WITHOUT NOTICE

Service termination without notice, in the context of this report, refers to a CESP ending energy service to its end-use consumer or group of end-use consumers without

⁶ Redlining is the practice of a CESP choosing not to serve an end-use consumer or group of end-use consumers because of poor location and/or low profit margins.

⁷ Reliability Team addresses licensing of CESP and aggregators, information disclosure (end-use consumer privacy), and redlining. Consumer Information Team addresses slamming, end-use consumer bill of rights, and information disclosure (billing).

notification. Possible reasons for service termination for end-use consumers without contract protection include problems with or increase in the cost of serving that specific end-use consumer or area of end-use consumers or discovering a more economical group of end-use consumers to serve. For end-use consumers with or without a contract with a CESP, service could be terminated for nonpayment. This consumer protection issue requires the CESP to give notice to the end-use consumer prior to losing electric service to allow time for them to find another CESP.

Customers who have entered into a bilateral contract with a CESP may not need this additional protection. The contract may already include provisions for terminating service. However, many residential end-use consumers and some commercial end-use consumers may not have an opportunity to contract with a CESP but, instead, be grouped with other end-use consumers by an aggregator. These end-use consumers may not have the protection of a contract. Therefore, at minimum, CESP should be required to provide notice to their end-use consumers prior to discontinuing or terminating service.

The majority of the states that reviewed this issue believe all CESP should be required to provide notice to the end-use consumer prior to shutting off service. One example given was a 30-day notice requirement. (Maine, H-568, LD 1804) In Maine, Nevada, and Montana, state laws allow the respective commissions to establish rules or standards on the conditions of CESP terminating service.

The following are examples of questions that need to be addressed in developing rules regarding CESP termination of service: If a consumer selects a CESP, and the CESP decides to terminate its generation service without notice, what protections are there for the consumer? If required to give notice, how much time should be required (e.g., 30 days)? What types of default require notice? Can other services (e.g., metering and billing) provided by the CESP be canceled without notice? What information should be included in the notice? What protections are needed for each end-use consumer

class? Should special procedures be established during hot or cold weather periods and/or for low-income, disabled, or elderly end-use consumers?⁸

I. CONTRACT PROVISIONS

A. RECISSION RIGHTS

Recission rights are a provision that allows an end-use consumer to back out of a contract so many days after it was signed. It basically allows end-use consumers to change their minds.

The logic behind this provision is to protect both inexperienced end-use consumers from being bound to contracts that are wrong for them and elderly end-use consumers who may have been taken advantaged of by high pressure supply marketers. This is similar to a buyer protection that exists in Iowa law (Code of Iowa, Chapter 555A) for door-to-door sales. If a buyer signs a contract with a door-to-door salesperson or purchases a product or service from the seller for \$25 or more, the buyer has three business days to terminate the transaction without any penalty or obligation.

Of the states (California, Maine, and Massachusetts) that discussed recission rights, all agree end-use consumers should have the right to change their minds on who should be their CESP. However, the number of days the end-use consumer has after signing the contract varies between three to five days.

If policymakers address this provision in rules, these questions would need to be answered: 1) how many days should be given to exercise this right? and 2) should it be done orally or in writing?

⁸ Maine Public Utilities Commission Order, "Inquiry into Stranded Consumer Protection Provisions and Licensing Requirements for Competitive Electricity Providers," Docket No. 97-590, March 17, 1998, pp. 8-9.

B. MINIMUM NOTICE OF RENEWAL TERMS

Contracts between an end-use consumer and CESP would most likely include language explaining renewal terms. If a contract can be automatically renewed, minimum notice of the renewal terms may be appropriate. Most end-use consumers will not remember exactly when their contracts expire. Without any notice, an end-use consumer could be committed to another term that was not desired. Customers need an opportunity to decide whether to continue receiving service by that specific CESP or to shop somewhere else before being locked into a contract for another term.

Allowing the end-use consumer to have rescission rights, at least through the transition period and requiring the CESP to give notice to the end-use consumer of any renewal terms are a sample of issues that first need to be identified and, once identified, further considered before rules or procedures are developed.

The details of most consumer protection issues are better addressed in rules. Several commissions are given the authority to further investigate the need for additional consumer protection rules. Some of the broader consumer protection issues are addressed in states' laws (e.g., CESP licensing, slamming, and consumer privacy).

Policymakers may want to establish a working group to investigate in more detail potential consumer protection issues and, if necessary, consider rules to protect end-use consumers from potentially harmful actions by the CESP and delivery service providers. Licensing of CESP and aggregators is an example of a consumer protection issue that may be addressed in the Iowa law (this issue is addressed in the Reliability report).

LOW-INCOME ASSISTANCE PROGRAMS

I. LOW-INCOME HEATING ENERGY ASSISTANCE PROGRAM

The majority of support for low-income lowans comes from the Low-Income Heating Energy Assistance Program (LIHEAP). LIHEAP is a federal block grant program that assists eligible low-income households in meeting their home energy needs. Energy assistance is provided through LIHEAP grants made to the 50 States and the District of Columbia, Indian tribes and tribal organizations, and insular areas.

During the 1997-98 heating season, approximately \$18,000,000 were provided to assist lowans in meeting their energy needs.⁹ LIHEAP funds can be used for the following types of energy assistance:

- heating assistance
- cooling assistance
- energy crisis intervention
- low-cost residential weatherization and other energy-related home repair.

The program is offered on a first come/first served basis and is not designed to pay a household's total energy costs. To be eligible, income guidelines based on the number living in the household are established.¹⁰ The LIHEAP statute provides states with considerable flexibility in administering the program to deliver services effectively at the lowest possible cost. In Iowa, the program is administered through local community action agencies throughout the state.

Because of the uncertainty of future federal funding of the LIHEAP program, the Department of Energy and all the states' restructuring proposals reviewed examined

⁹ Iowa Department of Human Services.

¹⁰ For a family of four in 1998, the annual poverty level guideline is \$16,450. For the LIHEAP program, the household income level must not exceed 150 percent of the annual guideline to be eligible for assistance. For a complete chart of guidelines, see the Federal Register, Vol. 63, No. 36, Tuesday, February 24, 1998.

the needed provisions for low-income customers. Several states offer tariff rate discounts for low-income customers. Utilities would file low-income customer tariffs where an average discount of a specific percentage (e.g., 35 percent¹¹) of all but fuel costs. A percentage of income formula is another option being used. This program sets a percentage of income cap, which results in a maximum the customer must pay toward utility service. Several states are considering or have implemented a universal service benefit charge, a non-bypassable distribution surcharge on utility bills, usually in the form of a per kWh fee¹² to provide electric service access. The non-bypassable nature of the charge means that all end-use consumers pay based on their kWh usage. The universal system benefit charge is being viewed as a source of funds for a variety of programs including energy conservation and assistance to low-income customers.

Wheeling charges or a license fee are other sources of funds. A wheeling charge is applied to alternative providers who purchase the use of the distribution system. A licensing fee is charged to all CESP's who choose to enter the service market.

Other funding options for support of low-income programs include the state general fund or a surcharge assessed on all CESP's.

II. EMERGENCY ASSISTANCE PROGRAM

The federally funded emergency assistance program is available to families with a minor child and who are at 100 percent or less of the federally established poverty guidelines. The family must have less than \$1,000 in liquid resources and be in an emergency where the living situation is threatened (e.g., homeless, an eviction notice). The fund is used to assist with living expenses such as rent, a rent deposit, utility bill, utility deposit, a mortgage, or repair or replacement of heating equipment. Assistance

¹¹ This is the amount used in the discount tariffs for low-income end-use customers in Massachusetts.

¹² Typically referred to as a "wires charge."

is paid directly to the provider or CESP of the service. There is a single thirty-day eligibility period annually and a cap of \$500 per year for a family. Thus, a family could ask for help with both a rent deposit and a utility bill within the thirty-day time frame, but the maximum benefit is \$500. The program starts on the first of October and continues until the funds are exhausted. Recipients apply for assistance through their local human service office and are assisted on a first come/first served basis. Recipients must apply for LIHEAP and general relief funds and, if applicable, veterans assistance prior to applying for emergency assistance. The LIHEAP and emergency assistance program work in conjunction with each other, so a family could receive benefits from both programs in a given year. The Department of Human Services (DHS) indicates there are not many repeat families receiving aid from emergency assistance. The appropriation for the 1998-99 season is comparable to the 1997-98 winter season, about \$2.5 million, all of which is federally funded. During the 1997-98 season, the funds were exhausted on March 13, 1998.¹³

III. IOWA CUSTOMER CONTRIBUTION FUND

Iowa Code 476.66 authorizes the establishment of a customer contribution fund which offers end-use consumers the opportunity to fund weatherization measures, heating assistance, and other programs for those needing assistance through a donation added to the utility bill. Contributions may be in the form of a monthly pledge as well as one time or periodic gifts. Matching funds are allowed, if a person or organization wishes to promote such a program. Historically, this fund has contributed about \$500,000 a year for low-income assistance, with the majority of funds targeted at heating assistance.¹⁴ This program is voluntary. Any pledges made by an end-use consumer or other party are not binding.

¹³ Iowa Department of Human Services.

¹⁴ Iowa Utilities Board, *Customer Contribution Fund Annual Report*, Fiscal year ended June 30, 1997.

Because there is uncertainty of future federal funding of LIHEAP and energy assistance programs, the policymakers may wish to assess the need for new or expanded programs to assist low-income customers.

APPENDIX A

SUMMARY OF STATE AND FEDERAL ACTIVITIES BY ISSUE

UNIVERSAL SERVICE ISSUE (IN GENERAL)

SUMMARY OF STATES' ACTIVITIES

Massachusetts: In Massachusetts' law, the Department is authorized and directed to promulgate rules and regulations to establish service quality standards for each distribution and transmission company including standards for universal service. In addition, each electric company will need to file a plan on or before January 1, 1998, if this has not already been done. Proposed programs to provide universal service for all end-use consumers are to be included in this plan. (Chapter 164 of the Acts of 1997, Section 1F(7), p. 66)

West Virginia: In West Virginia's law, the legislature found that "Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and the cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in West Virginia. Therefore, reliable electric service should continue to be available to all end-use consumers at reasonable rates and on reasonable terms and conditions." ("Enrolled Committee Substitute for H.B. 4277," Article 2.24-2-18(a)(1), March 14, 1998)

In addition, in Article 2.24-2-18(a)(6)(C) and (I), if a deregulation plan is to be submitted by the Commission, the plan should preserve universal electric service at reasonable rates and assure that end-use consumers have meaningful choices among electricity providers and that end-use consumers are protected from anti-competitive behavior; poor service; and unfair billings, collection, and disconnection procedures.

FEDERAL ACTIVITIES

Congressional bills H.R. 1230, introduced by Representative Tom DeLay in April 1998, and S. 722, introduced by Senator Craig Thomas, would preserve state authority over universal service.

Congressional bill H.R. 1359 entitled "Protection for the Environment and Low-Income Families Pursuant to Electric Utility Industry Deregulation," was introduced by

Representative Peter DeFazio. This bill would create a joint federal-state board to promote universal service among other things.

CUSTOMER ACCESS TO SERVICE

I. SECURITY DEPOSITS

SUMMARY OF STATES' ACTIVITIES

California: Statutory regulation allows the registered entities to require a deposit before commencing service. The deposit shall not exceed the estimated bill for the end-use consumer for a three-month period. The PUC must adopt rules to implement minimum standards on end-use consumer deposits. (Senate Bill (SB) 477, p. 21)

Massachusetts: CESP's are not allowed to require deposits from residential end-use consumers. (Chapter 164 of the Acts of 1997, November 25, 1997)

Michigan: It is recommended the deposit for delivery service providers and aggregators selling to small end-use consumers continue to be regulated. Also the current rules pertaining to deposit conditions, amount of deposit, prohibited practices, deposit retention, and deposit disposition for residential end-use consumers should be retained with some modification to include aggregators and reflect any other changed conditions. A deposit by a large end-use consumer for the CESP's should be determined by the market. As the market matures, deposit requirements may change, but changes should reflect market conditions. The terms and conditions of deposits should be included in contracts for service. Initially, CESP's will be anxious to enlist new end-use consumers, and deposits should be minimal. (Michigan Staff Report, "U-11290, Electric Restructuring Customer Focus Issues and Recommendations," October 13, 1997, pp. 3-6)

New York: The New York Commission proposed rules that allow a provider of last resort to require a deposit or other remedy if a residential end-use consumer has outstanding past due bills for electric service from another provider. (New York, Opinion No. 97-5, May 19, 1997)

Ohio: The Ohio PUC has proposed rules establishing standards for each electric delivery service provider. The rules require written procedures to determine creditworthiness of applicants and end-use consumers for service based solely on their creditworthiness.

A utility may request:

- cash deposits;
- the end-use consumer meet creditworthy criteria;
- a deposit if an account is in arrears;
- a deposit to establish or reestablish tariffed service; or
- additional deposit if the deposit on file is insufficient.

The following may be used in determining creditworthiness:

- a) verify creditworthy freeholder of the premises to be serviced or other real estate within the electric delivery service provider's territory or service area;
- b) verify creditworthiness with generally accepted practice to verify credit, employer, and length of service, etc.;
- c) verify a prior account with electric delivery service provider for the same class of service within two years; and
- d) designate a guarantor who is an end-use consumer of that electric delivery service provider.

Ohio has also included in the proposed rulemaking that the delivery service provider provide an applicant/end-use consumer with his/her credit history and the rules and telephone number of the Commission upon the end-use consumer/applicant's request. In addition, the proposed rules provide:

- The deposit shall not exceed 130 percent of the estimated average monthly bill for the end-use consumer for the ensuing 12 months.
- A company may adjust the deposit after 3 consecutive billing months taking into account seasonal variation.
- A company must provide a written notice of deposit request.
- An end-use consumer has 10 days to pay the requested deposit.
- The account is reviewed annually.
- There is a prompt refund plus interest if the service was not disconnected for nonpayment and there was no more than two past due bills in the past 12 months.

(Ohio Proposed Rules, issued February 5, 1998, pp. 24-30)

Pennsylvania: The Pennsylvania PUC proposed to maintain its current deposit rules. (Pennsylvania Public Utility Commission Public Meeting, July 10, 1997, p. 22)

CESPs are required to comply with the PUC credit rules that require service without deposit if the end-use consumer has good payment/utility history. (The Electricity Generation Customer Choice and Competition Act, 66 Pa. C.s. §§2801-2812, December 31, 1996)

Wisconsin: In the Commission's draft rules for residential end-use consumers, a utility may not require:

- A cash deposit or other guarantee as a condition of new residential service (unless the end-use consumer has an outstanding balance with any Wisconsin utility within the last six years).
- A deposit if the end-use consumer provides the utility with information showing that his or her gross quarterly income is less than or below 200 percent of federal income poverty guidelines.

The proposed rules require a utility to inform the end-use consumer of his or her right to enter into a payment arrangement for payment of the deposit amount.

The utility must consider the end-use consumer's ability to pay.
(Wisconsin draft rules for electric utilities, Chapter PSC 113, pp. 17-21)

SUMMARY OF FEDERAL ACTIVITIES

NARUC: The rules covering security deposits and late fees should be fair and nondiscriminatory. The rules should also be the same for all electricity providers and not allow for anti-competitive behavior. (NARUC Comments on Electricity Subcommittee of Strategic Issues Customer Choice Workshop, End of 1997)

II. LATE FEES

SUMMARY OF STATES' ACTIVITIES

California: The California legislature mandates the billing by utility companies for late fees must be separately stated. (SB 477, p. 21)

Massachusetts: CESP's are prohibited from charging late fees from residential end-use consumers. (Chapter 164 of the Acts of 1997, November 25, 1997)

III. SWITCHING FEES

SUMMARY OF STATES' ACTIVITIES

Michigan: The switching fees assessed by the delivery service provider should receive careful scrutiny. These charges should not be prohibitive to end-use consumers who want to switch and should reflect only the cost of processing the changes. Detailed rules for the costs, if any, of switching CESP's or aggregators, and the circumstances under which the charges may be applied are recommended. It is also recommended that any requirements for fees for each utility be tariffed. (Michigan Staff Report, "U-11290, Electric Restructuring Customer Focus Issues and Recommendations," October 13, 1997, p. 26)

Rhode Island: Rhode Island's law prohibits exit fees for residential end-use consumers who choose an alternative CESP. (96-H 8124B, Section 39-1-27.2(d))

IV. OBLIGATION TO CONNECT

SUMMARY OF STATES' ACTIVITIES

Arizona: The participants of an "Unbundled Services and Standard Offer" Working Group agreed that the local delivery service provider should order connects and the connection should be in a nondiscriminatory fashion. ("Unbundled Services and Standard Offer Working Group Report to the Commission," p. 45)

According to the Arizona Community Action Association Advocacy, the obligation to serve should continue for the delivery service providers meaning these companies should maintain their historical obligations. There is a continuing obligation to serve because electric service is an essential need. (“Comments from the Arizona Community Action Association Advocacy,” p. 2)

California: The delivery service provider has the obligation to provide access and connection to end-use consumers and alternative CESP’s on a nondiscriminatory basis. (AB 1890; SB 477)

Florida: A restructuring bill, filed by Senator Charlie Crist on March 5, 1998, requires the delivery service providers to connect all end-use consumers in their service territories on a nondiscriminatory basis.

Georgia: The staff believes that the obligation to serve should be eliminated. The utility having to bear the cost of social burdens should end with deregulation. (Georgia Public Service Commission Staff Report on Electric Industry Restructuring Docket No. 7313-U, January 23, 1996)

Maine: The Maine Commission recommends to the legislature that “the Commission would continue to regulate as public utilities the companies that transmit and distribute electricity. These transmission and distribution (T&D) utilities would have exclusive service territories and an obligation to connect end-use consumers to the power grid.” (“Maine Public Utilities Commission Recommendation to Legislature for Restructure of Electric Utilities Industry,” p. 2; also included in “An Act to Restructure the State’s Electric Industry, PL 1996, ch. 316, May 29, 1997)

Maryland: Staff recommends that the utility continue to be obligated to serve and will be compensated for performing universal service functions through the cost-of-service rates set by the Commission. (Maryland Commission’s Inquiry into the Provision and Regulation of Electric Service, Order No. 73834, Case No. 8738, December 3, 1997)

Massachusetts: The Department stated, in D.P.U. 95-30, at pp. 16 and 25, that each distribution utility must continue to have an obligation to connect all end-use consumers in its service territory to the distribution system.

Massachusetts’ law, Chapter 164 of the Acts of 1997,¹⁵ Section 1B. (a) states that the delivery service provider shall have the exclusive obligation to provide distribution service to all “retail” end-use consumers within its service territory. If someone else

¹⁵ Chapter 164 is entitled, “An Act Relative to Restructuring the Electric Utility

wishes to provide distribution service in that service territory, they have to get written consent from the delivery service provider.

Montana: Although no specific mention of the obligation to connect, the legislation states that the utilities must maintain “existing end-use consumer service requirements.” The distribution facilities are to be available to CESP, providers, and end-use consumers on a nondiscriminatory, comparable basis. (Electric Utility Industry Restructuring and Customer Choice Act, SB 390)

New Hampshire: The delivery service providers will continue to be obligated to connect all end-use consumers. The services (e.g., the delivery of energy and capacity; service outage restorations; service extensions; end-use consumer information; system safety; and basic end-use consumer services) are to be provided until these services can be better provided through a competitive market. (“Restructuring New Hampshire’s Electric Utility Industry: Final Plan,” Dr 96-150, February 28, 1997, p. 79)

The electric distribution utility will continue to be required to provide metering, billing, and end-use consumer services for all end-use consumers whose peak loads do not exceed 100k. (DR 96-150, Electric Utility Restructuring, “Order on Requests for Rehearing, Reconsideration and Clarification,” Order No. 22,875, March 20, 1998)

In New Hampshire’s law, it is stated electric service should be available to all end-use consumers since electric service is essential. The delivery service provider must be obligated to connect all end-use consumers in its service territory. (Chapter 129, HB 1392, Section V)

Nevada: The delivery service providers are to continue to provide all noncompetitive services that were originally provided by vertically-integrated utilities. (AB 366, July 16, 1997)

Oklahoma: In Oklahoma’s Enrolled Senate Bill No. 500, the distribution utility will continue to be obligated to connect all consumers in its service territory. However, it will no longer be required to provide electric supply.

Pennsylvania: As part of House Bill 1509, there is a section devoted to “Obligation to Serve.” Within this section, it is stated that the delivery service provider will still be obligated to connect as long as the company is collecting a competitive transition charge or until 100 percent of its end-use consumers have choice, whichever takes longer.

Rhode Island: The transmission and delivery service providers must provide access to all end-use consumers at reasonable terms on a nondiscriminatory basis. (96-H8124 Substitute B)

Texas: In Texas Commission's Executive Summary of the first report to the legislature, it stated on the page entitled, "Goals and Principals to Guide Industry Restructuring," there is an obligation to serve given the essential nature of electric service.

SUMMARY OF RESEARCH MATERIALS

Federal Legislation: Senate Bill 237 was introduced by Senator Dale Bumpers on January 31, 1997. In this bill the electric utility company shall be obligated to provide electric energy for and on behalf of any consumer served by the utility company's local distribution facilities. ("Electric Industry Restructuring Scorecard," May 1998, Energy Policy Department, p. 4)

ICE Bill: The local delivery service provider will only be obligated to connect within its service territory on nondiscriminatory and comparable service terms and conditions; it will be relieved of its obligation to serve. (Section 11)

V. DISCONNECTION AND RECONNECTION PROVISIONS

SUMMARY OF STATES' ACTIVITIES

Arizona: The delivery service provider should have the only authority to disconnect and connect. A CESP cannot order the delivery service provider to disconnect because of nonpayment to the CESP. (Arizona Working Group Report)

California: The law mandates that only an electric corporation or publicly-owned electric distribution utility that provides physical delivery service to the affected end-use consumer shall have the authority to physically disconnect or reconnect an end-use consumer from the transmission or distribution grid. Disconnection will occur only in accordance with the established PUC guidelines. In addition, the utilities are prohibited from disconnecting an end-use consumer for nonpayment to providers. (SB 477, p. 20)

Kansas: Kansas' current version of the Cold Weather Rule allows for special payment and disconnection procedures. The time period extends from November 1 to March 31. The utility cannot disconnect an end-use consumer's service during the cold weather period when the local national weather service office forecasts that the temperature will drop below 35 degrees or will be in the mid-30's or colder in a 48-hour period. ("Draft Final Report of Retail Wheeling Task Force," to fulfill the requirements of 1996 HB No. 2600.)

Maine: The Maine PUC recommended to the legislature: "Transmission and distribution utilities could not disconnect end-use consumers from their system for nonpayment of charges by, or other disputes with, power CESP." ("Maine Public

Utilities Commission Recommendation to Legislature for Restructure of Electric Utilities Industry,” p. 4)

In the law, “An Act to Restructuring the State’s Electric Industry,” P.L. 1997, Chapter 316, Section 3203 (14) prohibits the delivery service provider from disconnecting electric service for the failure to pay for generation charges or for any dispute between an end-use consumer and a competitive provider. Disconnection is allowed if standard offer services are not paid. This provision is similar to what is found in other states including California and Pennsylvania.

Maryland: Staff notes that the delivery service provider could not disconnect service based upon an end-use consumer’s payment problems with third-party CESP. (Maryland Commissions Inquiry into the Provision and Regulation of Electric Service, Order No. 73834, Case No. 8738, December 3, 1997)

Massachusetts: Law provides only distribution utilities can disconnect from electric grid pursuant to Department of Telecommunications and Energy (DTE) rules. (S1970164.doc).

Michigan: The staff recommends that rules be established regarding collection practices for both CESP and distributors for delinquent bills and the Commission oversee the collection practices and shut off procedures. The areas to be addressed are payment arrangements, shut off, and transfer of unpaid balances. Under current rules, if an end-use consumer accrues billing arrearages, a payment arrangement can be made with the company. The procedure is as follows: 1) the CESP/distributor should offer the end-use consumer a payment arrangement if the end-use consumer claims an inability to pay the entire bill; 2) a payment arrangement should be in writing and be signed by both end-use consumer and the company; and 3) if the end-use consumer defaults on the payment arrangement, the company should follow the shut off procedures. (The Michigan Public Service Commission Staff on October 13, 1997, “U-11290, Electric Restructuring Customer Focus Issues and Recommendations”)

It is recommended the distribution and regulated generation companies remain the same as they are now. Similar rules should be applied to competitive CESP. The following are recommendations for rules for distribution and regulated generation companies regarding disconnection:

Proposed rules should be established that define the conditions under which an end-use consumer can be shut off. The rules should define the circumstances under which shut off is permitted and prohibited. It should state if shut off is permitted for nonpayment of energy or distribution services or both (the two are directly connected). Failure to pay for energy supply (and hence shut off of that service) leaves the distribution utility with no energy to deliver to the end-use consumer. The rules should also provide for delaying shut off in the case of a medical emergency. The rules should also establish:

- the form and contents of the notice;
- the timing requirements of the notice;
- the end-use consumer should be notified in person or by phone before shut off occurs;
- the hours during which shut off is permitted;
- the process for restoring service after disconnection in order to ensure that the end-use consumer is turned back on promptly; and
- charges to the end-use consumer for restoring service should be reasonable and specified in tariffs or contracts of the distributor or CESP.

(The Michigan Public Service Commission Staff on October 13, 1997, “U-11290, Electric Restructuring Customer Focus Issues and Recommendations,” pp. 3-6)

New Hampshire: Because the delivery service provider controls the meters, it has the ability to disconnect service. The delivery service provider should not be required to disconnect an end-use consumer who is delinquent on their energy bill in order to avoid placing the delivery service provider in the middle of the dispute between the end-use consumer and the CESP. However, the delivery service provider can shut off an end-use consumer for not paying the transmission and distribution charges in accordance with the Commission’s rules.

The default power administrator will be allowed to disconnect service for nonpayment of the service bill. To get service restored, the end-use consumer would be required to make full payment of the bill or pay some of the bill and make arrangements for payment on the unpaid portion of the bill. (“Restructuring New Hampshire’s Electric Utility Industry: Final Plan,” Dr 96-150, February 28, 1997, p. 89)

The New Hampshire law allows the Commission to establish procedures and standards regarding end-use consumer service including termination of service. The distribution and transmission utility cannot attempt to collect bills owed to another CESP as a condition of providing service. (Chapter 129, HB 1392)

New Jersey: In New Jersey’s staff report, staff believes existing programs, such as the winter moratorium, should be protected. As restructuring moves forward, New Jersey should preserve the provision and funding of current social programs. Staff also encourages the coordination with other non-utility social programs (both public and private) to gain efficiencies and avoid administrative duplication. (New Jersey’s Staff Plan, “Electric Restructuring,” p. 145.)

Ohio: Ohio proposed rules for disconnection and refusal of service to nonresidential end-use consumer allows a utility to disconnect or deny service when:

- an end-use consumer fails to comply with the contract;
- service to the end-use consumer violates any law of the state;
- there is tampering or fraudulent use;
- the use of service adversely affects electric distribution;

- there is a safety hazard;
- an end-use consumer refuses access to electric distribution;
- there is nonpayment for electric distribution service of bill or deposit;
- an end-use consumer requests it;
- the end-use consumer vacates the premises;
- there are repairs upon notification by the utility; and
- the former end-use consumer whose account with that electric delivery service provider is in arrears for service furnished at the premises, resides at such premises.

Also the PUC proposed rules to prevent disconnection for failure to pay for nontariffed or unordered items.

(Ohio Proposed Rules, issued February 5, 1998, pp. 30-31, 36-40)

The Commission proposed rules that the utility may require the end-use consumer to establish an inability to pay. The utility may also exercise discretion in the application of such plans based on the amount of the delinquent account, the length of time the balance has been outstanding, recent payment history, reason why payment has not been made and relevant factors including age and health. Each utility shall offer a 6-month plan or one-third of the balance due each month plus the current charges. (Ohio, Interoffice Memorandum, March 28, 1997, Proposed Rules 4901:1-10-20)

Pennsylvania: The PUC proposed:

- the electric delivery service provider and CESP design a procedure to exchange information to meet a seven-day time frame to discontinue service when requested;
- end-use consumers should be encouraged end-use consumer through education to direct the electric delivery service provider to request discontinuance of service to ensure timely processing. When end-use consumers contact the CESP instead of the electric delivery service provider, the procedure must include a process for quick notification to the electric delivery service provider.
- the electric delivery service provider and CESP should identify the type of account to ensure proper identification of the type of service, and
- the procedures must ensure coordination between the electric delivery service provider and CESP.

(Pennsylvania Public Utility Commission Meeting, July 10, 1997, pp. 35-36)

The Pennsylvania PUC issued a Tentative Order on “Guidelines for Universal Service and Energy Conservation Programs Made Pursuant to 66 Pa. C.S. 2803, 2802(17), 2804(8) and 2804(9),” on April 24, 1997. It states that the consequences for nonpayment should be loss of service. The participants should be returned to the regular collection cycle if they default. (p. 9).

Staff recommends developing rules that define the conditions under which an end-use consumer can be shut off. The rules need to define the circumstances under which shut off is allowed or not. Also the rules should allow a delay in shut off in the case of a

medical emergency. The current rules protect end-use consumers, particularly the low-income and senior citizens, from being shut off during the winter months. This winter protection plan should continue to be available to end-use consumers of CESP and delivery service providers.

The rules should establish the following:

- the form and contents of the notice;
- the time frame in which the notice must be sent;
- the entity that is shutting off service should contact the end-use consumer in person or by phone before shut off occurs;
- the hours during which shut off is permitted;
- the process for restoration of service after shut off in order to ensure that the end-use consumer is turned back on promptly;
- charges to the end-use consumer for restoring service should be reasonable and specified in tariffs or contracts of the distributor or CESP. "These rules not only help to avoid shut off by giving end-use consumers a chance to rectify the reasons for shut off but also will prevent inappropriate shut off of service."

(The Michigan Public Service Commission Staff on October 13, 1997, "U-11290, Electric Restructuring Customer Focus Issues and Recommendations")

The PUC proposed the electric delivery service provider retains the responsibility for the provisioning of transmission and distribution services. The application of the requirements regarding restoration of services also remains with the electric delivery service provider. The electric delivery service provider must not make payment of supply charges, other than supply charges from the provider of last resort, a condition for restoration of service. (Pennsylvania Public Utility Commission Meeting, July 10, 1997, p. 45)

Rhode Island: Pursuant to the PUC regulations, a utility can terminate service for nonpayment. (96-H 8124 Substitute B)

Vermont: The disconnection policies will continue to be effective in a restructured electric industry. The staff is proposing at this time that the delivery service provider should only be allowed to disconnect end-use consumers who fail to pay their distribution charges. Staff will consider fully the question about how to handle disconnection and nonpayments for energy services to the CESP. (Docket No. 5854, p. 40)

Wisconsin: The Commission proposed to add to the already existing disconnections rules the following:

- The service may not be disconnected or refused if there is a heat advisory, warning, or emergency within the utility's service area. A utility shall attempt to reconnect service to an occupied dwelling that has been disconnected when it becomes aware of a potential threat to health or life that results from the combination of the heat and loss of service.

The language proposed to increase the number of days the end-use consumer must be served with a disconnection notice from 8 calendar days to 10 calendar days. The commission also proposed to increase the number of days if the disconnection is not accomplished on or before the "15th day" to "17th day."

If adopted, the rule would read:

A utility shall not disconnect residential service for reasons enumerated in sub. (1) unless written notice is sent to the end-use consumer by first class mail or personally served on a responsible adult member of the household at least 10 calendar days prior to the day of the proposed disconnection. If disconnection is not accomplished on or before the 17th day after the issuance of a notice, a subsequent notice shall be left on the premises not less than 24 hours nor more than 48 hours prior to disconnection, unless the following conditions are met:

1. The end-use consumer has made no payments for the last two consecutive heating seasons.
2. The end-use consumer has an ability to pay, as evidenced by income/expense information for the household and/or information on a credit report for the end-use consumer and/or the household.
3. The end-use consumer is not enrolled in, nor is eligible for the utility's low income assistance program.

If the utility can show that the above conditions are met, the utility shall send written notice to the end-use consumer by first class mail at least ten calendar days prior to the day of the proposed disconnection, and must state the expiration date of the notice, not to exceed six months from the date of issuance. (p. 27)

SUMMARY OF FEDERAL ACTIVITIES

NARUC: Under various circumstances, certain end-use consumers or end-use consumer classes may need protection from termination of electric service. For example, special provisions for settling delinquent accounts should be considered for low income, senior citizens or those with special needs or medical conditions, especially during times of extreme weather conditions.

The options are:

- a. Establish or maintain basic shut off or termination of service procedures. Such procedures should include a description of the circumstances under which a shut off or termination could occur (i.e., nonpayment of service); and, a reasonable period of notice prior to shut off or termination.
- b. Establish special procedures to be followed during extreme heat or cold weather periods.

- c. Establish special procedures, such as exhaustion of opportunities for an extended payment plan arrangement, to apply if the end-use consumer is low income, disabled, or elderly.

(Resolutions adopted at NARUC's Winter 1998 Committee Meetings)

PROVIDER OF LAST RESORT

SUMMARY OF STATES' ACTIVITIES

California: Universal service will be provided by distribution utilities through purchases from the power exchange. (AB 1890)

The Commission may exercise its authority to investigate a process for certification and regulation of the rates, charges, terms, and conditions of default service. If the Commission determines that such a process is in the public interest, the Commission must submit its findings and recommendations to the Legislature for approval. (SB 477, Section 365.5)

Delaware: The Commission recommends that during and after a transition period, universal service be provided to end-use consumers by establishing a default provider that would have the responsibility to provide quality, competitively-priced electric service to any end-use consumer unable or unwilling to get an alternative CESP. The incumbent utility should serve during the transition. The Commission should have the discretion and authority to determine if and when an auction bid should take place for the selection of post-transition period default providers. When the Commission determines that the generation market is sufficiently competitive such that a successful auction for the default generation service of each utility could be held, the transition period should be terminated, and the retail generation rates for default end-use consumers should no longer be regulated. A default provider and its existing and potential end-use consumers should be required to adhere to standards and guidelines regarding end-use consumers who switch away from, and return to, default service. The guidelines should identify how much lead time the provider should get from an end-use consumer before having the obligation to serve that end-use consumer, and how much of a switching fee the end-use consumer should be charged. It is likely that special guidelines will need to be developed for large end-use consumers. (PSC Docket No. 97-229, Order No. 4707, January 27, 1998, Exhibit A., pp. 3-4 and 22)

Georgia: The Commission should develop appropriate mechanisms to fully reimburse utilities that continue to provide universal service. For the longer term, the Commission should explore approaches for allowing providers to compete for the role of default CESP. (Georgia PSC Staff Report on Electric Industry Restructuring, Docket No. 7313-U)

Kansas: The proposed bill would require end-use consumers who do not elect to switch to a competitive provider to continue to be served by their existing utility or its

successor or affiliate. The bill would further require the distribution utility to act as the default CESP in instances wherein the competitive CESP fails to supply electric power for reasons other than end-use consumer nonpayment. (Final Report of the Task Force on Retail Wheeling to the 1998 Kansas Legislature, December 1997, pp. 30 and 57)

Maryland: The utility shall remain the default service provider and the CESP of last resort within its service territory for the foreseeable future. Prior to June 30, 2004, the Roundtable shall develop recommendations for the provision of default service after that date. Possible alternatives include bids or the development of a risk pool. (Public Service Commission of Maryland, Order No. 73834, Case No. 8738, December 3, 1997, pp. xviii and 153)

Maine: The Commission will establish by rule the terms and conditions for standard offer service which must be available until March 1, 2005. This must include entry and exit conditions; protection against a provider's failure; appropriate rate design; retention of average price within an end-use consumer class; and credit, collection, and disconnection practices. Standard offer provider is to be determined by a bid process to the Commission and continue for a Commission-determined period of time. (HB 1804; §3212)

Massachusetts: Each delivery service provider must continue to have an obligation to connect all end-use consumers in its service territory to the distribution system and provide distribution service. The delivery service providers will be required to provide basic service to all end-use consumers in its service territory: (1) who choose not to contract with a CESP; (2) who cannot obtain power in the open market; or (3) whose CESP fails. (DPU 96-100; pp. 40, 42-43)

Beginning March 1, 1998, each delivery service provider shall provide default service to its end-use consumers who have chosen retail electricity service from a non-utility affiliated generation company or CESP but who require electric service for any reason including provider failure. The delivery service provider shall procure such service through competitive bidding within specified parameters. The department is authorized to promulgate rules to accomplish this. The department may authorize an alternate generation company or CESP to provide default service if that service is in the public interest. (Chapter 164 of the Acts of 1997, signed into law November 25, 1997; pp. 57-58)

Missouri: Regulated utilities which are members of the exchange must continue to provide retail service, provide open access to their transmission and distribution system for CESP to the exchange. Any end-use consumer who has not elected a provider will be assigned to a provider who is selected by the PSC through a competitive bid process. The process will be repeated every 18 months. (LEAP Letter-January/February 1998, p. 31)

Montana: All public utilities shall submit a transition plan to the Commission one year before any end-use consumers are to be entitled to a choice of electricity CESP. Public utilities shall propose a method for end-use consumers to choose an electricity CESP. If an end-use consumer has not chosen an electricity CESP by the end of the transition period, a public utility shall propose a method in the public utility's transition plans for assigning that end-use consumer to an electricity CESP. The public utility is required to be an emergency CESP of electricity and related services. When the distribution utility acts as emergency CESP, it will be reimbursed at a multiple of costs by the electricity CESP who should have provided the service. (Electric Utility Industry Restructuring and Customer Choice Act, §69-8-208) (SB 390 §69-8-201; §69-8-203; and §69-8-208)

Nevada: Provision of electric service for those end-use consumers unable or unwilling to shop for alternative sellers of electricity will remain the obligation of the electric utility unless assigned to another entity. Upon a finding that the public interest would be promoted, other entities may be assigned these end-use consumers through direct assignment or a competitive bidding process. (Nevada Electric Industry Restructuring, AB 366, Legislation Summary--July 1997, p. 5 of 8; AB 366; Section 45.1)

New Hampshire: Allowing end-use consumers to choose among CESP's will help ensure fully competitive and innovative markets. Customers should expect to be responsible for the consequences of their choices. The Commission should ensure that end-use consumer confusion be minimized so that end-use consumers make well-informed choices. (HB 1392, § 374-F:3(II), p. 2 of 7)

The PSC vacated its earlier decision on its approach to addressing default service. It had required incumbent utilities to administer programs and required them to make new wholesale purchases and to resell that power to default end-use consumers. Although the PSC disagreed with commentators' claims that this in effect was an extension of a utility's historic service obligation, it nonetheless vacated the requirement. They will instead entertain proposals from competitive CESP's to serve the energy requirements or demands of default end-use consumers. Incumbent utilities will no longer be required to purchase power on behalf of any retail end-use consumer, including default end-use consumers. The PSC will consider specific service territory proposals and/or statewide proposals. (Order on rehearing, final policy decisions, pending since 3/97, DR-96-150, Order No. 22,875, March 20, 1998, pp. 63-66)

New Hampshire-based UNITIL, and its Massachusetts subsidiary Fitchburg Gas & Electric received no bids for their default power service, although there was no bid price cap. UNITIL had sent RFP's to 160 CESP's seeking fixed price default power in single-priced, cents/kWh bids. A UNITIL representative speculated that the lack of bids may indicate that the CESP's confused default power with standard offer power. UNITIL plans to refrain from taking further action on the default RFP until it receives guidance from the state DTE. In this instance, default power is defined as temporary supply at market rates provided when end-use consumers' competitive CESP goes out

of business or cannot deliver for some reason. (Electric Utility Week - May 18, 1998, pp. 6-7)

New Jersey: As we move to a competitive power supply market, a CESP(s) of last resort is(are) necessary to ensure that all retail end-use consumers have access to power. At least during an initial transition period, the local distribution utility should be assigned the responsibility of providing basic generation service. The end-use consumer should have a right to choose not to choose an alternative CESP. (Restructuring the Electric Power Industry in New Jersey, Findings and Recommendations, April 30, 1997, Docket No. EX941205a5Y)

New York: The Commission's stated vision for the electric utility industry includes a provider of last resort for all consumers and the continuation of a means to fund necessary public policy programs. Each end-use consumer must be able to count on at least one CESP who will continue to provide service at reasonable rates in the event that 1) the end-use consumer chooses to make no change from its current situation; 2) a new CESP fails to meet its obligations; or 3) competitive alternatives are not yet available in the area. Further, the transmission and delivery service provider should continue to be the provider of last resort during the transition to a competitive environment. (Opinion and Order Regarding Competitive Opportunities for Electric Service, Opinion No. 96-12, May 20, 1996)

The role of the provider of last resort should consist of the following responsibilities: 1) accept all end-use consumers subject to applicable consumer protection rules; 2) meet end-use consumers' electricity supply needs by obtaining electricity consistent with the Commission's decision in the individual utilities' restructuring cases and the development of a competitive electricity market; and 3) provide any programs to assist low-income end-use consumers that the ones the Commission determines are appropriate. As a matter of policy the Commission's long-term preference is to introduce competition to the provider of last resort function, however, it is not appropriate to decide this issue now. It will be reconsidered when there has been more experience with the competitive retail market. (Opinion and Order Establishing Regulatory Policies for the Provision of Retail Energy Services, Opinion No. 97-1, issued and effective May 19, 1997)

Following are terms included in Orange and Rockland Utilities, Inc.'s (O&R's) restructuring settlement. It is intended that O&R continue as the provider of last resort; however, the parties have agreed to study whether transferal of this obligation to the market is in the public interest and will present their recommendations to staff by May 1, 1999. Further, the T&D company will be the provider of last resort for all end-use consumers choosing to continue to purchase energy services from it, for those end-use consumers who do not choose an energy provider, and for those end-use consumers who purchase from other providers, but who later return as end-use consumers purchasing power from the T&D company. The parties agree to study transferring this obligation to the competitive market. (Terms of the settlement in the Opinion and Order

Adopting Terms of Settlement issued and effective December 31, 1997, In the Matter of Orange and Rockland Utilities, Inc.'s Plans for Electric Rate/Restructuring, pp. 9, 37-38)

Oklahoma: The legislature directed the Commission to undertake a study of all relevant issues and develop a proposed restructuring framework. The Commission is expressly prohibited from promulgating any rules or issuing any orders relating to restructuring without prior express authorization by the legislature. The legislation directed the Commission to adhere to principles and directives in developing a framework for a restructured industry, including the principle that delivery service providers shall have a continuing obligation to provide distribution service but shall be relieved of the obligation to provide electric supply, and a default provider will be established for end-use consumers who have not chosen an alternative CESP. (SB 500, §4, Nos. 7 and 9, pp. 4-6)

Pennsylvania: The distribution utility must continue as a regulated monopoly and provider of last resort to assure the availability of universal service, unless the Commission approves a different provider. (HB 1509, §2802 (16))

PECO will serve through December 31, 2008, as the provider of last resort for all retail electric end-use consumers in its service territory that do not choose or cannot choose to purchase power from alternative CESPs. (Petition for Settlement Docket No. R00973953; p. 26)

Rhode Island: Each delivery service provider shall within three months after retail access is available to 40 percent or more of kWh sales in New England, arrange for a last resort power supply for end-use consumers who are no longer eligible to receive service under the standard offer service and are not adequately supplied by the market because they are unable to obtain or retain electric service from nonregulated power producers. Acceptance of bids by the electric delivery service provider and the terms and conditions for such last resort service shall be subject to approval by the Commission. (96-H 8124B, §39-1-27.2(f)) and (97-H 6288A am, Chapter 357, §39-1-27 (d) and §39-1-27.d (f), July 7, 1997)

South Carolina: The distribution utility, defined as the host utility participating in the process will obtain power from CESPs to serve end-use consumers who do not choose a CESP, as well as end-use consumers with emergency needs related to CESP shortcomings. (LEAP Letter-January/February 1998, p. 41)

Vermont: To protect end-use consumers against unnecessary service disruptions during and, possibly, after the transition to competition, all distribution utilities will be required to establish or designate a "basic service offer" for each class of end-use consumer. This service will be made available over a contracted period, through a retail service provider, to all end-use consumers. Under the Board's restructuring proposal, the distribution utility would be responsible for securing such service, by

bidding out the obligation to a retail service company (or companies). (Docket No. 5854, Order Entered: December 31, 1996, pp. 150 and 165)

SUMMARY OF FEDERAL ACTIVITIES

NARUC: Resolutions from the NARUC Winter Meeting state: Electricity providers supply an essential service that is vested with the public interest regardless of whether it is offered in a competitive or monopoly market. Anyone who wishes electricity service should be allowed to obtain it at a reasonable and nondiscriminatory price. A provider of last resort may need to be established to serve a particular geographical area at a reasonable, comparable price in situations where no electricity providers have offered to serve end-use consumers in that area, where end-use consumers have unattractive usage levels, or where other circumstances exist, such as where end-use consumers are low-income or have simply declined to choose. NARUC Options for the provider of last resort include: 1) incumbent utility or affiliate; 2) competitively bid; or 3) auctioned. (Resolutions adopted at NARUC's Winter 1998 Committee Meetings, pp. 13-14)

SUMMARY OF OTHER RESEARCH

Legislation Proposed by the ICE Coalition: This legislation defines default provider as the provider of power supply services to an end-use consumer that has not chosen a CESP. A default provider shall be a provider for any local distribution utility end-use consumer who has not chosen a CESP. The board shall establish default providers in an open, nondiscriminatory manner. The board shall establish universal service standards to ensure the participation of default providers serving all classes of end-use consumers. The board biannually shall review the method of selecting default providers. Failure of an end-use consumer to select a provider of power supply services shall be deemed to be a request to be assigned a default provider as provided by the board. A local distribution utility is relieved of its obligation to provide power supply services but is obligated to connect and provide distribution services to all end-use consumers. The local distribution utility is not liable for any damages to a current or future end-use consumer if the CESP or provider of unbundled services chosen by such end-use consumer pursuant to section 476B.6 fails to deliver such services pursuant to the terms of its bilateral contract with such end-use consumer. (Proposed ICE Restructuring Legislation, pp. 3, 11, 14, and 19)

Article 1: The article states that "Allowing utilities to inherit the default market, a most lucrative *monopoly* asset, even as they're freed from fundamental monopoly regulation, is to doom competition to failure." The article also discusses the lessons learned from the 1984 breakup of the Bell system. In 1985 Regulators crafted an experiment to jump start the market. Carriers in each market were provided with end-use consumer information so that they could implement a ballot process. When completed a percentage of non-voting end-use consumers was allocated to the competitors. Competitors received a percentage of the default market equal to its market share.

During the experiment the non AT&T market share increased and stayed at a higher level than in the entire previous year. AT&T still commands 61.3 percent of the long distance market. Regulators are urged to craft creative mechanisms that otherwise eliminate the incumbent's stranglehold on most of the market. (O'Reilly, Kathleen, January/February LEAP Letter, Guest Perspective "Choosing an Electricity CESP: Eeny Meeny, Miney, Mo-What to Do When Most Say 'No,'" pp. 2-5 and footnote 1)

Article 2: Requiring utilities to provide basic service during a transition period may be appropriate. However, requiring utilities to be the provider of last resort as a long-term measure with no similar obligation on non-utility service providers is likely to lead to a two-tiered market. Profitable end-use consumers would have access to a highly competitive "voluntary" market while end-use consumers who are not considered profitable would be served by the utility providing minimal basic service on an involuntary basis. Contrary to the goal of universal service, those end-use consumers who are least able to pay would pay the highest rates. To avoid such a situation, policy makers should require all service providers to participate in providing service to end-use consumers who have not chosen a provider, have no competitive choices, or are terminated by a provider. One method to accomplish this is through assignment based on market share. Providers should be obligated to serve these end-use consumers in a nondiscriminatory manner and subject to uniform consumer protection rules regarding end-use consumer deposits, shut offs, billing and bill-related assistance. (Oshiro, Carl K., "Universal Service in a Restructured Electric Industry," The Consumer Research Foundation, ©1997, p. 35)

CONSUMER PROTECTION

SUMMARY OF STATES' ACTIVITIES

Arizona: A list of consumer protections were provided by the Arizona Community Action Association Advocacy. It included: 1) at a minimum, existing consumer protections must be maintained; 2) low-income, residential, and small commercial consumers should not be subjected to unfair or discriminatory application practices, credit denial, or credit barriers; 3) access must be ensured without discrimination; 4) new rules for partial payments should be adopted; and 5) no disconnection of access for nonpayment of competitive supply. ("Comments from the Arizona Community Action Association Advocacy," October 28, 1997, pp. 2-3)

California: The PUC must adopt rules for end-use consumer protections including standards for disconnection and end-use consumer deposits. (AB 1890)

Illinois: The CESP's must comply with current statutory requirements imposed on public utilities to the extent that they are applicable. (Electric Service Customer Choice and Rate Relief Law of 1997, SB 362, December 16, 1997)

Maryland: In Maryland's PUC staff report, the staff urges the PUC to: 1) continue existing end-use consumer service protections; 2) require authorization of electric CESP; and 3) provide PUC oversight and enforcement mechanisms to ensure effectiveness of these protections. Staff proposes the current end-use consumer protections be continued, for both distribution and supply service. This should include the disclosure of terms and conditions of service, billing requirements, privacy protections and dispute resolution procedures.

The Commission believes additional authority from the General Assembly would be needed to avoid controversy and delay in implementing programs. The additional authority is for: 1) enactment of specific end-use consumer protection, anti-fraud, and market abuse protections; and 2) consumer protection requirements for electric CESP. (Maryland's Order No. 73834, Case No. 8738, p. xxvii)

Montana: The current consumer protection rules are still in effect for the delivery service providers but do not apply to CESP; however, the Commission has the authority to adopt new rules. (Electric Utility Industry Restructuring and Customer Choice Act, SB 390, May 2, 1997)

Nevada: There is no requirement that current consumer protection rules be applied to alternative sellers. (AB 366, July 16, 1997)

New Hampshire: Staff believe consumer protections on CESP should be minimal in a competitive market. However, rules still need to be developed about protecting end-use consumers from unauthorized transfer of service, notice requirements prior to termination of an energy contract, and billing information.

Consumer Protection issues include: 1) provide end-use consumers with access to the grid; 2) establish uniform terms for disclosure of billing and price information; and 3) provide protection from anti-competitive or unfair actions by CESP.

Hearings on this issue have revealed significant support among the parties for the continued application of consumer protection regulations to the regulated delivery service provider. However, there are divergent views with respect to whether the consumer protections should apply to CESP and the Commission's role in dispute resolution.

Below are the different views:

1. Commission should not apply consumer protection rules to competitive CESP but rather should rely on existing consumer protection laws. It makes no sense to create rules for a market that is being deregulated.
2. Commission should apply consumer protection rules to competitive CESP.

3. The existing consumer protection laws nor the resources of the Attorney General's Consumer Protection Division are sufficient to provide the level of consumer protection needed for such a fundamental aspect of safe and adequate housing and basic human needs.
4. Consumer Advocate proposed heavier regulation on the CESP's initially, with gradually decreasing regulation as end-use consumers become more educated about the operations of the new market structure. However, they reminded the Commission that the legislation states "end-use consumers should expect to be responsible for the consequences of their choices." (RSA 374-F:3, II)
5. Some feel the move to a competitive market structure necessitates the creation of new rules. ("Restructuring New Hampshire's Electric Utility Industry: Final Plan," Dr 96-150, February 28, 1997, p. 89)

Oklahoma: In Oklahoma's "Enrolled Senate Bill No. 500," its state there will be programs and mechanisms to ensure minimum residential consumer safeguards and protections such as low-income end-use consumers' electric service and default provider.

I. SERVICE TERMINATION

SUMMARY OF STATES' ACTIVITIES

California: Electricity providers are authorized to give notice of discontinuance. (AB 1890; SB 477)

Maine: In Maine's law, Subsection 4(A), the CESP cannot terminate generation service without a 30-day prior notice for end-use consumers with a demand of 100 kW or less. Also, in Subsection 4(B), service must be offered for a minimum of 30 days. (H-568, LD 1804)

The Commission has the obligation to adopt new standards for CESP's conduct that provide the conditions for service termination. With minimal notice, CESP's can discontinue service to nonpaying end-use consumers; however, to collect their unpaid debts, they have to use the same methods as other competitive businesses. ("An Act to Restructure the State's Electric Industry," PL 1996, Ch. 316, May 29, 1997)

Montana: Law allowing the Commission to promulgate rules establishing how and when an electric CESP may discontinue service. (SB 390, Section 26(2))

New Hampshire: With sufficient notice to both the end-use consumer and the delivery service provider, the CESP can terminate the energy contract for nonpayment of the energy bills.

Competitive CESP's or the default service administrator are **not** to attempt to collect a balance due to another CESP as a condition of providing service to an end-use consumer. (HB 1392, May 21, 1996)

Nevada: Law allowing the Commission to establish procedures and standards regarding end-use consumer service including termination of service, which must be met by alternative sellers in order to obtain license to sell. (AB 366, Section 40.2)

Pennsylvania: Proposed CESP's are not to require negotiated payment agreement. The delivery service provider must continue to negotiate payment agreement and termination for nonpayment. CESP's are free to pursue all available collection remedies to collect delinquencies except threatening termination of residential service. Written notice must state failure to pay will result in cancellation of contract with the CESP, not termination of service. (Pennsylvania Public Utilities Commission, Public Meeting, July 10, 1997, pp. 38-39)

Rhode Island: Although there is no specific language on disconnection for failure to pay the CESP, the law suggests that CESP's cannot use the disconnection tool. (Utility Restructuring Act of 1996, 96-H8123, August 7, 1996, amending Title 39 of R.I.G.L. 1956 (1988 Reenactment))

SUMMARY OF FEDERAL ACTIVITIES

NARUC: The Commissions need to maintain or establish basic shut off or termination of service procedures for all competitive CESP's that include the following: 1) a description of the circumstances under which a termination could occur; 2) a reasonable period of notice prior to termination; 3) special procedures to be followed during extreme heat or cold weather periods; and 4) special procedures to apply if the end-use consumer is low income, disabled, or elderly.

II. CONTRACT PROVISIONS

A. Rescission Rights

SUMMARY OF STATES' ACTIVITIES

California: In California's legislation, the end-use consumer has the right to rescind the contract. (HB 1890)

Maine: In the law, "An Act to Restructuring the State's Electric Industry," P.L. 1997, Chapter 316, Section 3203 contains language requiring the Commission to adopt, by rule, ". . . consumer protection standards and standards to protect and promote market competition in order to protect retail consumers of electricity from fraud and other unfair and deceptive business practices." In addition, subsection 4(C) requires providers to offer a right of rescission to end-use consumers within five days of the original selection

either orally or in writing. This is similar to the provision provided in Pennsylvania and California.

Massachusetts: An end-use consumer has the right to rescind, without charge or penalty, his or her choice of generation company, aggregator or CESP no later than midnight on the third day following the end-use consumer's receipt of a written confirmation of an agreement to purchase electricity. (Chapter 164, p. 68)

B. NOTICE OF RENEWAL TERMS

SUMMARY OF STATES' ACTIVITIES

Maine: In Maine's law, the Commission is to adopt new minimum standards for the CESP's' conduct including minimum notice provision for change renewal terms. (An Act to Restructure the State's Electric Industry, PL 1996, Ch. 316, May 29, 1997)

LOW-INCOME ASSISTANCE PROGRAMS

I. LOW-INCOME PROTECTION AND ASSISTANCE

SUMMARY OF STATES' ACTIVITIES

Arizona: Low-income end-use consumers should have the opportunity to participate in a competitive market. A portion of the residential end-use consumer allocation for the open market should be reserved for low-income consumers. It has been suggested by potential market entrants that the Arizona PUC acts as an aggregator to pool low-income residential load and solicit bids for service. (ACC Decision No. 59943, December 26, 1996)

California: The California Electric Restructuring statute (Assembly Bill (AB) 1890, effective September 23, 1996) states: "It is the further intent of the Legislature to continue to fund low-income ratepayer assistance programs, . . ." (Section 1(d)) The legislation authorized the Commission to establish a non-bypassable charge to be collected through the delivery service provider rates on the basis of usage to fund low-income energy efficiency and ratepayer assistance programs. (Section 381) A minimum funding level equal to the 1996 authorized spending levels for each utility was established as well. (Section 383)

California utilities fund and implement both energy efficiency and rate assistance programs to low-income end-use consumers through their rate structure. The California CARE program provides a 15 percent discount on volumetric gas, electric and monthly end-use consumer charges to households with income at or below 150 percent of federal poverty guidelines. For electric low-income end-use consumers these discount costs were approximately \$106.9 million in 1996. The energy management programs targeted to low-income end-use consumers totaled

approximately \$50 million by investor-owned utilities. These programs have a penetration ratio of approximately 56 to 58 percent of the eligible low-income households.

On February 5, 1997, the California PUC issued its Interim Opinion on Public Purpose Programs--Threshold Issues (D. 97-02-014) to implement the legislative directives concerning California's low-income programs. The PUC authorized a rate recovery mechanism equal to the 1996 authorized spending levels for each utility, but did not impose a spending cap. This will allow actual spending to be tracked and recovered in future rate decisions. The Commission specifically reserved the ability to increase program spending based on an analysis of need in the future. The Commission also created an independent statewide administrator for these programs and directed they be implemented through local community organizations in most cases. While initially created to deliver these programs to electric end-use consumers, the Commission stated that it would be moving to coordinate the equivalent gas programs with this same approach in the near future. The Public Purpose Program charge will be itemized on end-use consumer's bills starting in June of 1998. (AB 1890, September 1996)

Connecticut: A Systems Benefits Charge will begin January 1, 2000, for "electric service bill payment programs, funding and technical support for energy assistance, fuel bank and weatherization programs and weatherization services." The bill directs the Office of Policy and Management to develop a purchasing pool to "provide the opportunity to participate in such purchasing pool to each household that includes an individual who receives means-tested assistance administered by the state or federal government. Any such households shall receive through such purchasing pool the same benefits and rate discounts available for state facilities." Current low-income arrearage forgiveness programs will likely remain. The funding mechanism is a systems benefits charge that could include funding for weatherization programs and services and another charge of 0.3 cents per kWh for energy conservation programs that may include low-income. (House Bill (HB) 5005, April 1998)

Delaware: Existing low-income and conservation programs should be continued at current funding levels, and should be part of the cost of service of distribution utilities. Low-income end-use consumers should have an equal opportunity to participate in competitive generation markets, and their participation in such markets should not in any way interfere with their ability to have access to low-income assistance programs. In general, the major tools available for assisting low-income end-use consumers in securing competitive electric generation services under reasonable terms and conditions are:

- low-income usage reduction programs (i.e., energy efficiency and DSM programs);
- low-income bill assistance/percentage of income payment programs;

- a standard offer during the transition period and a reliable default provider after the transition period;
- strong end-use consumer service protections (credit, billing, and termination rules); and
- effective consumer education.

The first three options are intended to bring low-income end-use consumers' bills closer to affordable levels. (PSC Docket No. 97-229, Order No. 4704, January 27, 1998, p. 22)

Georgia: The Commission should develop appropriate mechanisms to fully reimburse utilities that continue to provide universal service. For the longer term, the Commission should explore approaches for allowing providers to compete for the role of default CESP. Social programs, such as low-income assistance, should be continued in a competitive market. The idea of coordinating social programs related to electric service with other state-provided assistance programs should be investigated. The necessity for universal service is one that must be mandated and accepted by either the regulatory body or some state agency. The oversight of cost must ensure adequate pricing to recover costs and provide equivalent market access on a competitively neutral basis. In a deregulated environment, with no assurance of financial recovery for the obligation to serve, the requirement to ensure service to low-income end-use consumers is passed on from the generator to either the government or the local "wire" CESP. (Georgia PSC Staff Report on Electric Industry Restructuring, Docket No. 7313-U)

Illinois: Consumer protections must ensure all end-use consumers receive safe, reliable, affordable, and environmentally safe electric service. The "Supplemental Low-Income Energy Assistance Fund" (Fund) is designed to supplement federal LIHEAP monies. The Fund is created as a special fund in the State Treasury. The Fund is authorized to receive, by statutory deposit, the moneys collected. Subject to appropriation, the Department shall use moneys from the Fund for payments to electric or gas public utilities, municipal electric or gas utilities, and electric cooperatives on behalf of their end-use consumers who are participants in the program authorized by Section 4 of this Act, for the provision of weatherization services and for administration of the Fund. The yearly expenditures for weatherization may not exceed 10 percent of the amount collected during the year. In determining which end-use consumers will participate in the weatherization component, the Department shall target weatherization for those end-use consumers with the greatest energy burden, that is the lowest income and greatest utility bills. The yearly administrative expenses of the Fund may not exceed 10 percent of the amount collected during that year. When fully implemented, the Fund will generate over \$75 million a year. Illinois IOUs are mandated, beginning on January 1, 1998, to assess each of their end-use consumer accounts a monthly Energy Assistance Charge to provide funds to this program. The administrator of the Fund will be the Department of Commerce and Community Affairs and its local

administering agencies, who currently administer LIHEAP and weatherization. (HB 362, November 1997)

Indiana: Under proposed legislation, low-income end-use consumers would continue to be covered. A new state assistance fund would cover federal shortfalls in home heating assistance by placing a small surcharge on all energy sales. (NRECA Electric Industry Restructuring Scorecard, May 1998)

Kansas: The Commission currently has no program for utility payment assistance to low-income electric end-use consumers. This has historically been handled by the federally-funded Low-Income Energy Assistance Program in the budget of the Kansas Department of Social and Rehabilitation Services. A provision to assist low-income persons was included in earlier versions of the bill and was subsequently removed. The argument cited for removal of that provision was that low-income persons currently are not assisted through utility rates, and that there are already programs to respond to such needs. (Final Report of the Task Force on Retail Wheeling to the 1998 Kansas Legislature, December 1997, p. 23)

Louisiana: Programs and mechanisms that enable residential end-use consumers with low incomes to manage and afford essential electricity requirements should be included as a part of industry restructuring. (PSC Recommendation on How to Proceed with Restructuring, Docket No. U-21453)

Maine: The Maine restructuring legislation states, "In order to meet legitimate needs of electricity consumers who are unable to pay their electricity bills in full and who satisfy eligibility criteria for assistance, and recognizing that electricity is a basic necessity to which all residents of the State should have access, it is the policy of the State to ensure adequate provision of financial assistance." Section 3214. Existing ratepayer assistance programs must continue as a minimum at current expenditure levels, approximately .5 percent of jurisdictional electric utility revenues. The program costs will be included in distribution rates charged to all end-use consumers. Future funding will be set based on "aggregate end-use consumer need." Section 3214(2)(B). The Legislation also provides for the possible future funding of these programs by the General Fund (i.e., taxes), at which time the PUC must reduce the funding provided through delivery service provider rates. The assistance should be designed to minimize the chance it might cause other welfare benefits to be reduced. Nothing may be construed to prohibit a transmission and distribution utility from offering any special rate or program for low-income end-use consumers that is not in effect as of the effective date of this chapter. Maine's SB 390 legislation has identified 30 to 40 rulemakings, projects, etc. for the PUC to address, including low-income issues. (L.D. 1804, An Act to Restructure the State's Electric Industry, May 29, 1997)

Maryland: The Commission is aware of and concerned with the need for proper end-use consumer protection and low-income end-use consumer assistance programs. To assist the parties in developing such programs, we have the following comments on

matters raised by the parties relative to these issues. The program developed for the Commission's consideration should, at a minimum, provide for the continuation of existing end-use consumer protections and assume the availability of LIHEAP and MEAP funds into the future. Such protections should also include the USPP program, restrictions upon winter termination, dispute resolution procedures for both generation CESP's and the Distco, supply and Distco service quality requirements and low-income weatherization programs. It is our intention that end-use consumer protection in Maryland will not be lessened by the implementation of retail competition. We further urge the development of desirable DSM programs for serving those Maryland residents having low-incomes and who are otherwise unable to participate in the private marketplace.

(Maryland Commissions Inquiry into the Provision and Regulation of Electric Service, Order No. 73834, Case No. 8738, December 3, 1997)

Massachusetts: Massachusetts's electricity restructuring bill, signed November 25, 1997, is a "first-in-the-nation" victory that will protect consumer, low-income, and environmental interests, according to the National Consumer Law Center (NCLC), which helped put together the bill, along with a coalition of 30 consumer and environmental groups. In passing the bill, the legislature found that: "Electricity service is essential to the health and well-being of all residents of the Commonwealth," and that "The restructuring of the existing electricity systems should not undermine the policy of the Commonwealth that electricity bills for low-income residents should remain as affordable as possible." Other consumer-related features of the bill: CESP's are subject to all existing consumer protection rules; service quality standards must be set to assure that service does not degrade from existing levels, and the service-of-last-resort prices (those offered by a default provider for end-use consumers who have been unable to obtain a provider) must be at or below the average market price. There will also be an initial residential price decrease of up to 15 percent. Utilities are also required to make "substantial" outreach to potential recipients of the low-income discount, which must include periodic notices and may include a computer match of end-use consumer accounts with lists of recipients of means-tested public benefit programs. Each utility must file a low-income end-use consumer tariff with a level of discount equivalent to that in effect prior to March 1, 1998. The average discount statewide is 35 percent of all but fuel costs.¹⁶ Delivery service providers are to guarantee payment to competitive CESP's for generation service provided to low-income end-use consumers, for the period before the competitive CESP could terminate service. There is also a ten percent discount for farmers. The funding mechanism will be a per kWh charge on every electric end-use consumer. The administrator will be subgrantee agencies who currently operate LIHEAP and weatherization. (Chapter 154, Acts of 1997, December 1997)

¹⁶ Fry, Gene, Massachusetts Public Utility Commission, Economist, telephone survey discussion on April 28, 1998.

Michigan: The advent of direct access may require the development of new programs designed to assist end-use consumers. For more than 20 years, the Commission has had billing practice rules designed to protect the rights of end-use consumers in their dealings with utilities. These rules need to be examined to determine if they should apply to direct access CESP¹⁷ or if the billing practices need modifications. (MPSC staff report "Electric Restructuring - Customer Focus Issues and Recommendations," June 5, 1997, Case No. U-11290)

Missouri: A cost-effective low-income program should be maintained and improved. In addition, options such as percent of income payment plans, arrearage forgiveness plans and weatherization plans, possibly funded by a non-bypassable distribution charge, should be explored. (Final Report of the Task Force)

Montana: Montana's legislation states that "The public interest requires the continued protection of consumers through continued funding for public purpose programs for low-income end-use consumer weatherization (and) low-income energy assistance. Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future." Montana defined a low-income end-use consumer as those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

A universal system benefits will be paid by each end-use consumer to provide funding for energy conservation, renewable resource projects, and low-income energy.

- a) Beginning July 1, 1999, and until July 1, 2003, 2.4 percent of each utility's 1995 retail sales revenue is established as the annual funding level for universal systems benefits programs.
- b) A minimum annual funding requirement for low-income energy bill and weatherization assistance is established at 17 percent of each utility's annual universal system benefits funding level.
- c) The annual charge for end-use consumers with loads greater than 1000 kilowatts is the lesser of \$500,000 or .9 mills per kilowatt hour purchased.
- d) Utilities and large end-use consumers receive credit toward their universal system benefits obligation for their internal programs.
- e) If a utility's or a large end-use consumer's credit does not satisfy the annual funding requirement, then it shall make a payment to the universal systems benefit fund or the universal energy assistance fund.
- f) Cooperatives may collectively pool their credits statewide.

¹⁷On April 11, 1994, in Cases Nos. U-10143 and U-10176, the Commission decided that such CESP^s were public utilities under 1929 PA 69, MCL 460.501.

- g) Investor-owned utilities and cooperatives must file annual reports relating to universal systems benefits to the transition advisory committee created by this bill.

A restructuring Transition Advisory Committee has until January 1, 1999, to develop recommendations to the legislature regarding implementation of the statewide universal energy assistance fund, including program administration. In the meantime, utilities continue to administer their own low-income programs. (SB 390, May 1997)

Nevada: The Legislation that passed in July 1997 will allow full retail competition by December 31, 1999. The legislation does not specifically mention low-income consumers, but it does say that regulations must provide "effective protection for persons who depend upon electric services." It also provides some utility commission oversight for minimum electric service for end-use consumers who have not chosen a CESP. The Commission may designate a utility to provide service to end-use consumers who do not elect or are unable to obtain alternative CESPs. (AB 366, July 1997)

New Hampshire: House Bill 1392 requires that "programs and mechanisms that enable residential end-use consumers with low incomes to manage and afford essential electricity requirements should be included as part of industry restructuring." Also: "a non-bypassable and competitively neutral system benefits charge applied to the use of the distribution system may be used to fund public benefits. . . such as programs for low-income end-use consumers." In a restructured industry, there are several key elements necessary to achieve the goal of universal service. One key element is ensuring manageable and affordable bills for low-income end-use consumers. The Commission sees two categories of potential problems facing low-income end-use consumers as they move to deregulation, unfair, and discriminatory business practices and affordability and manageability of electric bills. Accordingly, the Commission will authorize the establishment of a low-income assistance program to be funded through a systems benefit charge. Such a program should accomplish three goals: first, to bring electric bills into the range of affordability; second, to encourage conservation and the use of energy efficiency mechanisms to make electric bills manageable; and third, to make the most effective use of limited funding. The systems benefit charge shall be established, after notice and hearing, as a flat amount per kilowatt hour used and applied equally to all end-use consumers. (Order on rehearing, final policy decisions, pending since March 1997, DR-96-150)

Save Our Homes Organization (SOHO), an advocacy office, identified four approaches to provide low-income end-use consumers a discount. The approaches include: 1) rate discount programs; 2) percentage of income payment plans; 3) payment restructuring programs; and 4) energy conservation programs. SOHO believes that option two is most effective at targeting households with the greatest need.

New Jersey: Low-income, environmental, and consumer groups support continuation of programs; funding mechanisms are in dispute, with Ratepayer Advocate supporting wide-spread sharing of costs.

New York: The New York Public Service Commission has issued generic policy decisions concerning electric competition and is trying to move forward to implement those policy decisions in individual electric restructuring cases without specific legislative authorization or guidance. The Commission has stated its support for universal service and low-income programs but has deferred to the individual utility cases to determine the program design and funding level.

New York State Electric & Gas Company has a plan pending at the PSC. The plan includes a system benefits charge to provide \$40.2 million over three years for energy efficiency and public policy programs. An expanded low-income program will commit \$5 million in each of the next five years to add 32,000 end-use consumers.

On January 30, 1998, the PSC issued an Opinion and Order Concerning System Benefits Charge Issues which calls for a transition from utility service territory-specific to statewide public policy programs. The New York State Energy Research and Development Authority is designated by the PSC as the Systems Benefits Charge fund administrator. Statewide programs should improve efficiencies. Funds are to be collected for an initial three years, then the PSC will evaluate whether to continue. Levels are to be determined in individual rate and/or restructuring cases. Recently set funding levels will not be changed.

Ohio: Current five-year, low-income assistance programs are to be fully maintained during and after the five-year transition to a competitive generation market. Consumer Protections, Service Requirements and Social Programs, and Universal Service are to be consolidated and reimbursed to the generation provider from the current funding sources. After transition, each distribution provider should procure competitively bid service for low-income end-use consumers, either directly or by contract with a private entity or a state agency program serving low-income end-use consumers.

Oklahoma: Oklahoma's Electric Restructuring Act states that "Minimum residential consumer service safeguards and protections shall be insured including programs and mechanisms that enable residential consumers with limited incomes to obtain affordable essential electric service and the establishment of a default provider for any distribution end-use consumer who has not chosen an alternative CESP." Currently the state's two largest electric and gas utilities provide a 10 percent rate decrease to LIHEAP end-use consumers amounting to about \$2 million yearly. The law also requires the Oklahoma Corporation Commission (OCC) and the Oklahoma Tax Commission to study electric restructuring issues and make recommendations to the legislature in the next few years. Customer choice would come to the state by July 1, 2002. The OCC may consider the establishment of a distribution access fee assessed

to all consumers to cover social costs, capital costs, and operating costs. (SB 500, April 1997)

Pennsylvania: On low-income programs, Pennsylvania's restructuring law states that "the Commonwealth must, at a minimum, continue the protections, policies, and services that now assist end-use consumers who are low income to afford electric service." The costs of universal service and energy conservation services will be recovered by non-bypassable, competitively neutral distribution service charges, according to the law. Electric cooperatives are also required to continue their universal service and energy conservation programs, using the same funding mechanism. The existing universal service programs (affordable pay plans, rate discounts, arrearage forgiveness, etc.); including Customer Assistance Programs (CAPS), also known as affordable payment plans; and energy conservation which encompasses the Low-Income Usage Reduction Program. The Commission's Act is clear in its intent that utilities are to continue, at a minimum, the protections, policies and services that now assist end-use consumers who are low-income to afford electric service. Section 2802(9) requires that electric service is essential to the health and well-being of residents, to public safety and to orderly economic development; and electric service should be available to all end-use consumers on reasonable terms and conditions. The Act states that certain public purpose costs, including programs for low-income assistance, energy conservation and others, have been implemented and supported by public utilities' bundled rates.

Eligibility criteria for the individual universal service components include the following:

- a) Chapter 56 regulations establish standards for all residential electric end-use consumers, therefore, all low-income end-use consumers who participate in universal service programs are covered.
- b) Low-Income Usage Reduction Program (LIURP) regulations at 52 PA Code, §58.2 define a low-income end-use consumer as a residential end-use consumer with household income at or below 150 percent of the Federal poverty guidelines. Section 58.10 defines priority of program services. This section outlines the following order of priority for receipt of LIURP services:
 1. Eligible end-use consumers with the largest usage and greatest opportunities for bill reductions relative to the cost of providing program services shall receive services first. Additional criteria for usage level and bill reduction are also defined.
 2. Among end-use consumers with the same standing under number 1, those end-use consumers with the greatest arrearages shall receive services first.
 3. Among end-use consumers with the same standing under number 2, those households with the lowest incomes shall receive services first.
 4. A utility may spend up to 10 percent of its annual program budget on eligible special needs end-use consumers.
- c) Customer Assistance Program (CAP) eligibility. A CAP applicant must meet the following eligibility criteria:

1. Status as a ratepayer or new applicant is verified.
 2. Household income is verified at or below 150 percent of the Federal poverty guidelines.
 3. The CAP applicant is payment troubled.¹⁸ When determining if a CAP applicant is payment troubled, a utility should select one of the following definitions of payment troubled. Payment troubled is defined as a household who meets one of the following criteria:
 - a) A household whose housing and utility costs exceed 45 percent of the household's total income;
 - b) A household who has \$100 or less disposable income after subtracting all household expenses from all household income;
 - c) A household who has an arrearage. The utility may define the amount of the arrearage; or
 - d) A household who has received a termination notice or who has failed to maintain one payment arrangement.
 - d) Customer Assistance and Referral Evaluation Services (CARES) eligibility. Each utility may define eligibility for a CARES program. Generally, CARES eligibility may be targeted to special needs end-use consumers. Special needs end-use consumers include those who have experienced a family crisis such as loss of income, divorce, or major illness.
 - e) Hardship fund eligibility. Hardship funds are typically targeted to end-use consumers whose household income is verified at or below 150% of the poverty level.
 - f) Plain language policy statement. The plain language policy statement establishes guidelines for communications with all residential end-use consumers; therefore, all low-income end-use consumers who participate in universal service programs should receive plain language communication.
 - g) Secretarial letters related to collection activity. The Secretarial letters established policies for all residential end-use consumers; therefore, all low-income end-use consumers who participate in universal service programs are covered by the policies addressed in the Commission's Secretarial Letters.
- (M-00960890 f 0010, Tentative Order, April 24, 1997)

In July 1997, the PUC issued a Final Order establishing Guidelines for Universal Service and Energy Conservation Programs. The PUC order stated utilities themselves should continue to administer their programs, relying on community-based organizations. Currently, some utilities use community action agencies and community-based organizations to administer their programs locally. (HB 1509 / P.L. 802, December 1996)

¹⁸ In order for the universal service and conservation guidelines to be consistent with the CAP Policy Statement, revisions to 52 Pa. Code Chapter 69 will be required. Specifically, revision to the CAP eligibility criteria at §69.265(4)(iii) will be required.

Rhode Island: Rhode Island's electric restructuring legislation declares that, ". . . in a restructured electrical industry the same protections currently afforded to low-income end-use consumers shall continue." (Section 39-1-1, Declaration of Policy) The current programs include special discount rates and Percentage of Income Payment programs. The law preserves all existing special rates for low-income end-use consumers and also opens the door for introducing new rates and programs. The costs for low-income discounts "shall be included in the distribution rates charged to all other end-use consumers." Currently, the largest electric utilities in the state offer a discount rate for low-income households amounting to about \$10 per month, or \$2 million per year. In addition, the law preserves all existing regulations dealing with "deposit and deferred payment arrangements, winter moratorium and medical emergency protections, and end-use consumer dispute resolution procedures." These rules will apply to "any public utility which distributes electricity." Furthermore, the law states "the Commission shall promulgate such further rules and regulations as are necessary to protect consumers following the introduction of competition in the electric industry." While the Rhode Island legislation does not mention low-income conservation programs, a 2.3 mill per kWh included in the distribution rates charged to all other end-use consumers funds overall energy efficiency. In 1997, advocates negotiated a \$400,000 low-income appliance efficiency program. (96-H 8124, February 1996)

South Carolina: The Commission makes no finding as to the necessity or advisability of implementing deregulation or restructuring of the industry at this juncture. The Commission cautions that there may be little to gain and much to lose by being on the leading edge of a restructuring movement. It may be helpful to evaluate the results of deregulation in other states before implementing any changes in South Carolina. (Public Service Commission of South Carolina, Electric Restructuring Process, February 3, 1998)

Vermont: The Vermont Public Service Board has recommended an all-fuels energy assistance program to be funded by a broad-based tax or energy fee. The Board recommends that if the Legislature does not enact the all-fuels tax or fee approach, electric utilities should provide programs to low-income end-use consumers funded by a non-bypassable charge. In either case, the minimum program should be based on need, as a reflection of the household electric bill in relation to the household's income, and administered statewide by an independent entity separate from the utilities themselves. The assistance program should include energy management services targeted to low-income end-use consumers as well. The Vermont Senate passed a comprehensive electric restructuring bill last year and it is slated for consideration in the Vermont House in early 1998. This legislation contains a delivery service provider non-bypassable fee to fund low-income programs for electric end-use consumers and requires that such programs be administered statewide by an independent administrator. (State of Vermont Public Service Board, Docket No. 5854, December 30, 1996)

Virginia: The law states that "appropriate consumer safeguards related to stranded costs and considering stranded benefits shall be implemented, as defined and determined by the General Assembly, and, thereafter, by regulation of the State Corporation Commission," which is the regulatory commission. In implementing the law, the Commission must ensure "reliable electric service and reasonable and just rates to all classes of consumers with due regard to the protection of the environment." Apart from a fuel fund and a small security deposit waiver, Virginia has no utility-funded low-income energy programs. (HB 1172, April 1998)

West Virginia: The PSC must also ensure its ensuing deregulation plan "preserves universal electric service at reasonable rates" and "addresses and maintains adequate provisions for low-income consumers and gives meaningful consideration to the development of funding mechanisms to protect senior citizens and other persons on fixed income, low-income persons and the working poor." Currently, the following end-use consumers of the state's regulated electric and gas utilities receive a 20 percent rate discount November 1 through March 31: recipients of Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), and elderly (age 60 and over) recipients of Food Stamps. The amount of the utility discount is credited dollar for dollar against each utility's state business and occupation tax liability, or, in the case of electric utilities, a generation tax. (HB 4277, March 1998)

Wisconsin: An initial overall need of \$105 million per year has been established to fund low-income weatherization and energy efficiency programs, bill payment assistance, early identification programs which increase an end-use consumer's ability to pay, protective and crisis management funds, and low-income research and development. If the federal government funds \$46 million, the public benefit state balance would be \$59 million. If federal funds fall below the forecasted level the state public benefit fund should make up the difference. Of the \$105 million, \$50 million should be designated to low-income weatherization and energy efficiency efforts.

SUMMARY OF FEDERAL ACTIVITIES

The Department Of Energy (DOE): The DOE proposes a \$3 billion Public Benefit Fund (PBF) to provide matching grants to the states for low-income assistance and other public benefits. The source of the fund would be a generation or transmission interconnection fee on all electricity, capped at 1/10 of one cent per kWh. A Joint Board composed of federal and state officials would set standards for fund eligibility. States would have flexibility to seek funds and be able to spend funds secured as they see fit. The PBF would sunset after 15 years.

S. 687: A 2 mill surcharge would be added to transmission costs to give the states matching funds for renewable energy, low-income energy assistance, and universal service programs.

S. 722: In the “Electric Utility Restructuring Empowerment and Competitive Act of 1997,” states would maintain the right to set performance standards, ensure system reliability, require funding to ensure universal service, renewable energy, low-income assistance, and research and development. (NRECA Electric Industry Restructuring Scorecard, May 1998)

NARUC: NARUC suggested using the following safeguards to protect low-income end-use consumers from potential adverse impacts of restructuring which include: 1) prevent unfair cost-shifting between end-use consumer classes; 2) make available the benefits of a competitive market to each end-use consumer class without undue discrimination; 3) maintain fair and reasonable billing and collection practices; 4) sustain Commission-approved low-income energy efficiency and rate programs; 5) limit disproportionate environmental impact in low-income neighborhoods; and 6) ensure effective participation of all citizens in the restructuring debate. (Maryland Commission’s Inquiry into the Provision and Regulation of Electric Service, Order No. 73834, Case No. 8738, December 3, 1997)

Under various circumstances, certain end-use consumers or end-use consumer classes may need protection from termination of electric service. For example, special provisions for settling delinquent accounts should be considered for low income, senior citizens or those with special needs or medical conditions, especially during times of extreme weather conditions.

The options are:

- a) Establish or maintain basic shut off or termination of service procedures. Such procedures should include a description of the circumstances under which a shut off or termination could occur, (i.e., nonpayment of service); and, a reasonable period of notice prior to shut off or termination.
- b) Establish special procedures to be followed during extreme heat or cold weather periods.
- c) Establish special procedures, such as exhaustion of opportunities for an extended payment plan arrangement, to apply if the end-use consumer is low income, disabled or elderly.

(Resolutions adopted at NARUC’s Winter 1998 Committee Meetings)

II. UNIVERSAL SERVICE FUND

SUMMARY OF STATES’ ACTIVITIES

California: Universal service will be provided by distribution utilities through purchases from the power exchange. (AB 1890, September 23, 1996)

Delaware: Universal Service: Electric service sufficient for basic needs (an evolving bundle of basic services) available to virtually all members of the population regardless of income.

Both during and after the transition period, the Commission recommends that universal service be provided to end-use consumers by establishing a default provider that would have the responsibility to provide quality, competitively-priced electric service to any end-use consumer unable or unwilling to get an alternative CESP. A default provider and its existing and potential end-use consumers should be required to adhere to standards and guidelines regarding end-use consumers who switch away from, and return to, default service. The guidelines should identify how much lead time the provider should get from an end-use consumer before having the obligation to serve that end-use consumer, and how much of a switching fee the end-use consumer should be charged. It is likely that special guidelines will need to be developed for large end-use consumers. (PSC Docket No. 97-229, Order No. 4704, January 27, 1998, p. 22)

Georgia: A universal access fund should be created to ensure that low-income end-use consumers receive electric service in a restructured industry. This fund needs to be structured in such a way that does not make it impossible for firm end-use consumers to benefit from competition. In a competitive market, all participants must share equitably in the costs of maintaining universal service through some type of non-bypassable surcharge on utility bills, exit fees or wheeling charges. Universal service is beneficial to society as a whole, but is uneconomic from a business stand-point. Universal service has been achieved under regulation, and quality of service standards and consumer protection rules have been enforced. These policies, standards and rules must be revisited in light of the changed circumstances of a competitive market in order to protect both the CESP and the public interest.

Kansas: Universal service costs include: 1) costs of assuring continued electric power to end-use consumers during implementation of the Commission's Cold Weather Rule in areas served by competitive generation providers; and 2) costs that are associated with provision of distribution to rural areas served by competitive generation providers and that negatively impact the affordability or accessibility to distribution services in those areas. The Commission would determine the amount necessary to recover the universal service costs. Such costs would be recovered, on or after the implementation date for retail competition, through license fees for competitive electricity providers and through a unit charge per kilowatt hour of electricity delivered in areas served by competitive providers. The Commission would determine the procedures and mechanisms for collection of the charge. (Final Report of the Task Force on Retail Wheeling to the 1998 Kansas Legislature, December 1997)

Louisiana: Universal service refers to the ability of all Louisiana citizens to obtain essential electricity, which is a necessity of modern life. Retail choice will allow end-use consumers and sellers to select each other, and if these sellers are unregulated they may elect never to serve low-income end-use consumers, or may choose to stop service in whatever manner the unregulated retail power sales agreement provides. Provisions for universal service should be an integral part of a retail choice scheme, at least until it can be determined that competitive retailers will voluntarily achieve acceptable levels of universal service. Accordingly, any restructured electric utility

industry should provide adequate safeguards to assure universal service. Minimum residential end-use consumer service safeguards and protections should be maintained. (PSC Recommendation on How to Proceed with Restructuring, Docket No. U-21453)

Maryland: Appropriate end-use consumer information and safeguards should accompany the introduction of retail access. The Commission should seek legislative guidance on whether Maryland should establish an economic assistance program funded by a universal service charge or rely on existing and expanded state programs. (p. 4) We direct that a State-wide Roundtable be formed for the purpose of developing specific proposals and cost estimates for universal service (including a universal service charge) in Maryland. As discussed elsewhere in this Order, we believe that a specific program, with specific cost estimates that permit knowledge of the program's effects upon rates, must be available before we commit to the adoption of specific proposals. (pp. 125-126) (Maryland Commission's Inquiry into the Provision and Regulation of Electric Service, Order No. 73834, Case No. 8738, December 3, 1997)

Missouri: Universal Service - If it is deemed to be the public policy of this state to move toward retail competition, small users of electric services must be protected and assured that they will receive affordable reliable service and will have the opportunity to benefit from retail competition. Access to continuous electric service both during the transition period and after implementation is a critical issue that must be determined within the legislation on electric restructuring. There must be a requirement that there be a provider of last resort. Some states have instituted a rate cap or reduction to be in effect to protect the consumer from significant price fluctuations during the transition to retail competition. The potential effects of these price mechanisms should be explored. Public goods or benefits programs should be retained. These include low-income assistance and weatherization programs. (Final Report of the Task Force)

Montana: "Universal system benefits charge" means a non-bypassable rate or charge to be imposed on an end-use consumer to pay the end-use consumer's share of universal system benefits program costs. Beginning January 1, 1999, 2.4 percent of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system end-use consumer. (SB 390, Summary)

New Hampshire: New Hampshire's legislation defines universal service as electric service that is essential and should be available to all end-use consumers. Programs and mechanisms that enable residential end-use consumers with low incomes to manage and afford essential electricity requirements should be included as a part of industry restructuring. (HB 1392, May 1996)

Pennsylvania: The Commission's Act, Section 2803, defines universal service and energy conservation policies as including end-use consumer assistance programs; termination of service protection; and policies and services that help low-income end-use consumers to reduce or manage energy consumption in a cost-effective manner, such as low-income usage reduction programs, application of renewable resources, and consumer education. Section 2802(17) requires that the public purpose be promoted by continuing universal service and energy conservation policies, protections, and services; and full recovery of such costs is to be permitted through a non-bypassable rate mechanism. Section 2804(8) requires the Commission to establish for each electric utility an appropriate cost recovery mechanism which is designed to fully recover the electric utility's universal service and energy conservation costs over the life of these programs. Section 2804(9) requires the Commission to ensure universal service and energy conservation policies, activities, and services are appropriately funded and available in each electric distribution territory. These policies, activities, and services shall be funded in each electric distribution territory by non-bypassable competitively neutral cost recovery mechanisms that fully recover the costs of universal service and energy conservation services. The Commission shall require each affected electric delivery service provider to submit a comprehensive and multi-year Universal Service and Conservation Program as part of its Restructuring Filing. Up to ten percent of the universal service budget may be applied to end-use consumers with special needs who are between 150 percent and 200 percent of the federal poverty guidelines.

Universal service components - Universal service programs should include, but not be limited to, the following programs, protections, and policies:

- a) Chapter 56 credit, collection, and termination protections. These services shall include a provider of last resort for end-use consumers who do not choose an alternative generation provider or whose generation provider refuses to grant service or cancels service based on nonpayment or other reasons. These services shall also include procedures for the delivery service provider and alternative generation CESP to coordinate dispute, termination, and payment arrangement procedures to assure that universal service participants receive the required protections in Chapter 56.
- b) A low-income usage reduction program (such as LIURP);
- c) A payment assistance program (such as CAP);
- d) A CARES program, or its equivalent, that meets the Commission's minimum guidelines contained in the Commission's Secretarial Letter of November 30, 1992;
- e) Administration of a hardship fund. The Commission strongly encourages generation CESPs to implement or join an existing hardship fund;
- f) Plain language guidelines covered under 52 PA Code, §69. 251. Any written information from delivery service providers and generation CESPs to residential consumers should be written in plain language; and

- g) All Secretarial letters relating to collection activity that were issued since June 1985.

A delivery service provider's universal service and conservation plans should include an education plan that targets low-income end-use consumers.

Consumer education efforts for low-income and universal service end-use consumers should strongly consider the following education and outreach activities:

- a) multi-language approaches, when appropriate;
- b) educational methods and messages (such as local radio, free local newspapers, and local community outreach) that are targeted specially to low-income end-use consumers;
- c) existing opportunities to educate low-income end-use consumers about choice, for example, when an end-use consumer receives budget counseling as part of CAP or energy education as part of LIURP; and
- d) target choice education efforts to secondary education students who may assist households to understand and pay utility bills.

The Commission believes the consequences for nonpayment of a CAP participant should be loss of service; therefore, the Commission recommended that participants who do not make payments should be returned to the regular collection cycle. (M-00960890 f 0010, Tentative Order, April 24, 1997)

West Virginia: The Commission's deregulation plan preserves universal electric service at reasonable rates. (HB 4277, March 14, 1998)

SUMMARY OF FEDERAL ACTIVITIES:

S.687: A 2 mill surcharge would be added to transmission costs to give the states matching funds for renewable energy, low-income energy assistance and universal service programs.

H.R. 1230: It would preserve state authority over universal service.

H.R. 1359: "Protection for the Environment and Low-Income Families Pursuant to Electric Utility Industry Deregulation" would create a joint federal-state board to promote renewable energy, energy conservation and universal service. The bill would impose a 2 mill/kWh wire's charge on transmission to fund matching fees with states for public purpose programs.

S. 722: "Electric Utility Restructuring Empowerment and Competitive Act of 1997." States would maintain the right to set performance standards, ensure system reliability, require funding to ensure universal service, renewable energy, low-income assistance, and research and development.

H.R. 1960: “Electricity Competition and Consumer Choice Act of 1997.” A joint state-FERC board would oversee universal service mechanisms.
(NRECA Electric Industry Restructuring Scorecard, May 1998)

NARUC: A provider of last resort may need to be established to serve a particular geographical area at a reasonable, comparable price in situations where no electricity providers have offered to serve end-use consumers in that area, where end-use consumers have unattractive usage levels, or where other circumstances exist, such as where end-use consumers are low-income or have simply declined to choose. A funding mechanism may be necessary to assure this. However, such a funding mechanism should be designed to prevent unfair cost-shifting between leaving end-use consumers and remaining end-use consumers.

The options are:

- a) Provider of Last Resort
 - 1) Incumbent utility or affiliate; or
 - 2) Competitively bid; or
 - 3) Auctioned.

b) Universal Service Fund

- 1) Establish a universal service fund from a per kWh assessment on all electricity sold, or via a wires charge, in order to maintain universal service; or
- 2) Establish a universal service fund from general tax revenues to maintain universal service

(Resolutions adopted at NARUC’s Winter 1998 Committee Meetings)

Rural Utilities Service (RUS): RUS issued a “white paper” calling for a universal service charge to help ensure continued adequate and affordable service to electric end-use consumers in rural areas. RUS claimed an electric system’s ability to average costs among end-use consumer classes will be jeopardized in a competitive market, with the result that end-use consumers in rural areas will pay higher costs. (NRECA Electric Industry Restructuring Scorecard, May 1998)

APPENDIX B

SUMMARY OF ADVISORY GROUP'S COMMENTS ON STAFF'S DRAFT UNIVERSAL SERVICE IN ELECTRICITY REPORT

Docket No. NOI-95-1

Customer Access to Service

MidAmerican – The issues of security deposits, late fees, switching fees, and disconnection/reconnection terms are not really “access” issues but rather questions of reasonableness of rates and terms and conditions of service. The Board should have jurisdiction over reasonableness of them since they are to some extent delivery or other regulated services. MidAmerican labeled these sub-issues consumer protection issues. The reasonableness of competitive services will be ensured because of customer choice.

I. Security Deposits

IAEC - The current rules on security deposits should continued to be applied to delivery service providers in a competitive market. These rules should not apply to CESP's because 1) the market is competitive not regulated, and 2) there is a need to encourage a competitive market.

IAMU – IAMU agrees that any end-use consumer can be required to pay a security deposit to their utility. To maintain low occurrences of bad debt or uncollectables, the municipal utilities utilize deposits equitably.

IAMU also agrees the Board should maintain flexible security deposit rules for delivery service providers. If CESP's are also allowed to require security deposits, the dual deposits should be reasonable.

Iowa SEED – SEED is concerned the market will set the amount of deposits too high for low-income end-use consumers. The rules in this area should apply to all CESP.

II. Late Fees

IAEC – The current rules are reasonable and should remain in place for the delivery company in a competitive environment. The late payments are designed to only cover associated costs. No additional rules are needed for the competitive service providers since the market will be competitive. In addition, the payment terms, including treatment of late payments, will be defined in the competitive electric service provider's contract.

IAMU - Charging a late fee is an effective tool in encouraging payment for services provided to end-use consumers. This tool should continue for delivery service providers in a competitive market. As mentioned for security deposits, if CESP are allowed to charge late fees, the combined late fee should not be unreasonable.

Iowa SEED – SEED agrees companies will desire some sort of late payment fee in a restructured environment. Therefore, the current law should be extended to include all CESP.

III. Switching Fees

IAEC – Switching fees should be recovered from the end-use consumers, should be charged directly to the end-use consumers in the case of cooperative delivery companies, and should be cost based. By not charging a switching fee, end-use consumers who choose not to choose or switch infrequently would have to recover these costs through delivery costs. The Board should approve the costs.

IAMU – IAMU would like to reserve the right to develop switching fees in accordance with their local ratemaking authority. These fees would be based on actual administrative costs.

SEED – To not discourage end-use consumers from switching providers, the switching fees must be kept at a minimum.

IV. Obligation to Connect

IAEC – The delivery service provider should be obligated to connect end-use consumers to the grid. Although, the commitment to serve should not be in the legislation. Personnel would need to be maintained to procure competitively priced energy supplies. Language requiring delivery service providers to provide default service should be included. This is not the same as the commitment to serve forever.

Also, the investor-owned utility is not the only entity currently obligated to serve, as stated in the report, but so are cooperatives and municipal utilities.

IAMU – The issue of obligating the delivery service provider to connect all end-use consumers to the grid is not debatable. This service cannot be economically duplicated.

In the report, it discusses the consideration of requiring the delivery service provider to serve its end-use consumers at least through the transition period. There is confusion as to what is meant by transition period. If consumers have a right to shop, the question is whether or not to have a provider of last resort. If consumers do not have the right to shop, then the incumbent utility or replacement provides the monopoly service.

MidAmerican – By obligating the delivery service provider to connect all end-use consumers within its service territory to the grid, universal access is ensured.

SEED – The delivery service providers must be required to connect all end-use consumers on reasonable terms and on a nondiscriminatory basis.

V. Disconnection and Reconnection Provisions

Alliant - It is recommended that more details be given in the report, such as: 1) a distinction be made between physically disconnecting service and ending a supplier business relationship without physically disconnecting service; 2) staff should consider the option of allowing a supplier to end the business relationship for nonpayment if a default supplier/supplier of last resort exists; 3) if this is not an option, then consider the rights available for the suppliers to seek compensation from a non-paying end-use consumer; and 4) staff should consider that the disconnect/non-pay regulations and protections only apply to the default supplier/ supplier of last resort.

Staff should also include discussion on the need for rules dealing with: “If one bill is used to collect both delivery and supplier charges, which entity receives compensation first in the event of delinquent payments?”

IAEC – The delivery service provider should continue to have the sole responsibility for disconnection and reconnection. Otherwise, end-use consumers could be confused. The disconnection and reconnection rules should also apply for payments to the delivery company for provider of last resort or default service.

CESPs should be able to terminate service to their end-use consumers in accordance with the provisions of the contract.

IAMU – Under this issue, staff discussed additional protections such as prohibiting the distribution company from disconnecting an end-use consumer for nonpayment to the supplier or prohibiting suppliers from disconnecting service for nonpayment of generation. Refinement of these protections is needed. For instance, the supplier should be allowed to terminate service to a end-use consumer for nonpayment with sufficient notice. If the end-use consumer does not find another supplier, that end-use consumer should be transferred to the default provider.

Also staff should consider the situation where the end-use consumer pays (in full) one bill to the supplier and the supplier does not pay the delivery service provider for the distribution services. An end-use consumer should not be disconnected for this nonpayment. The delivery service provider should be required to discern the reason for nonpayment prior to taking action against that end-use consumer.

SEED – This section is thorough and hits all the important points. In addition, the winter shut-off moratorium must continue in Iowa.

Provider of Last Resort

Alliant – The discussion on default provider/provider of last resort after the transition period should address: 1) Who does it? 2) What is the price? 3) If subsidized then how is it funded? and 4) How is it priced? However, these questions do not need to be answered in the report, listing them would be adequate.

IAEC – In order to reduce confusion and because the services will be more easily regulated if provided by the delivery service provider, it should be designated the provider of last resort and default service. These services should be cost based including any administrative costs for procuring the energy on the market. The Board should set these prices.

In addition, IAEC provided some comments on standard offer service. This topic was only indirectly mentioned in this report. These comments are more appropriately addressed in the Corporate/Market Structure report.

IAMU – The report seems to argue for the incumbent utility to automatically be designated as the provider of last resort, and then provides a recommendation where the policymakers are not precluded from using different options in determining the provider of last resort. IAMU agrees with the recommendation and further states, “It is

more consistent with the encouragement of competition to find the best provider, whoever it is.”

Competition means that end-use consumers can choose who they want to provide them service. Because there is choice, the government should not be accused of forcing an end-use consumer to take service from a lesser known entity by providing for some backup mechanism, as claimed in the report.

Competition is not to satisfy the end-use consumers who resent not being served by their incumbent utility. Competition should be introduced when, over the long run, costs will decrease and/or innovation increase.

The delivery service provider may not be the best provider of last resort. Competitive services of the utility will be provided through an affiliate if market power is appropriately addressed. The delivery service provider should be confined to the physical distribution business and not in power acquisition and energy services.

IAMU would support the incumbent utility retaining provider of last resort status if policymakers had authority to pursue other options (as given in the report) if a competitive market fails to develop. The market power concerns would have to be adequately addressed in state legislation and rulemaking first.

With respect to determining the costs of being provider of last resort, IAMU agrees that the CESP should pay heavily if it fails to supply its end-use consumer. The Board will need to address what to do with the amount of payment above costs. It believes that there are arguments for allowing a portion of the excess payment to be retained by the provider of last resort.

MidAmerican – Staff should consider a fourth option for determining who would be the provider of last resort. All CESP's should have the responsibility to continue to provide

service to their end-use consumers if the end-use consumers comply with payment requirements. The end-use consumer's incumbent provider would be responsible for providing last resort service if the most recent provider is no longer licensed to serve in Iowa. This way all-competitive service providers share in the obligation.

It is unnecessary to assign a default provider. Customers are already served by a public utility. If end-use consumers are assigned to another provider, it is not a default assignment. This is customer slamming and should not be allowed.

SEED – To ensure that all Iowans continue to have electric service that is affordable, safe, and reliable, there should be a provider of last resort and/or a default provider at least during the transition.

Consumer Protection

IAMU – Staff is correct in saying additional review of consumer protection issues is needed with respect to the relationship between the end-use consumer and the CESP.

MidAmerican – MidAmerican believes the legislation should include general areas of consumer protection for which the Board should consider rules. MidAmerican also opposes extending existing rules to the competitive market because it could strangle competition. Only regulations absolutely needed should be imposed.

SEED – Strong consumer protection measures must be codified.

I. Service Termination Without Notice

IAEC - There should be a specified time period to allow an end-use consumer to find a new supplier if their current service is terminated. This time period should be standard throughout Iowa and should be used to inform the default provider to contract for additional load in case the end-use consumer does not find another CESP.

IAMU – Staff states possible reasons for a CESP to terminate service to an end-use consumer. It is not clear whether staff is stating that these reasons are legitimate or reasons cited by the delivery service provider. Either way, these are invalid reasons. “With respect to the distribution company, it should have the obligation to extend service on ‘reasonable and nondiscriminatory’ terms; allowing termination of service to serve a more economical group of end-use consumers is inconsistent with this general obligation.” Also, if end-use consumers have a contract for a minimum term, the CESP should not be able to break the contract.

The reasons given by staff only apply if a supplier does not have a contract with the end-use consumer. In this instance a CESP can terminate service for any reason. Staff is then right that the CESP should be required to give notice to the end-use consumer for terminating not only generation services but billing or metering as well.

MidAmerican – The combination of existence of customer choice with adequate disclosure requirements will ensure the offering of reasonable termination notice requirements. MidAmerican does agree that end-use consumers should be allowed a reasonable period of time to locate a new provider prior to service termination. Providing notice for terminating metering and billing services should not be required; these are not “essential” services.

II. Contract Provisions

a. Rescission Rights

IAEC – To protect and educate consumers who get into a contract without fully understanding the responsibilities and services by “less than truthful market participants,” standard contract terms should be developed.

IAMU – IAMU would allow five business days to rescind service. This should be done either orally or in writing.

MidAmerican – There is no disagreement on issue. However, the request to change providers will not become effective and new service cannot be started until the end the rescission period.

b. Minimum Notice of Renewal Terms

IAEC – Staff contradicts itself with respect to residential and small business consumers and the existence of a contract. At one point, staff states that most consumers will interact with an aggregator and not be protected by a contract. Staff discusses contract provisions which require minimum notice. Is this a contract with a supplier or aggregator? Also, staff suggests that consumer protections on page 20 may not be necessary if the contract terms define the relationship.

IAMU – Staff is correct in suggesting that notice be required of the expiration of a contract or the automatic renewal in order for the end-use consumer to select a new supplier, if desired, before being locked into another term.

MidAmerican – It is suggested that for a renewal notice to be required, the contract should be for at least twelve months.

Low-Income Assistance Programs

DNR – Energy efficiency, renewable energy, and low-income energy assistance programs should be funded by a systems benefit charge or wires charge. In determining who manages the fund, consideration needs to be given to prior experience in the effective management of such funds and delivery of programs. DNR has twelve years experience “in managing Petroleum Violation Escrow fund settlements to ensure adequate and timely compensation to lowans through energy efficiency, renewable energy, and low-income assistance programs.”

IAEC – Policymakers should review the need for these programs before codifying the existing programs and instituting additional programs. Periodic review of the appropriateness of the programs is needed.

IAEC states that on page 22 of the report, it is suggested that delivery service providers sell services to CESP. The relationship between the delivery service provider and its end-use consumers is necessary; this relationship should not be severed. Also, the report suggests that a delivery service provider discount distribution services to CESP. This should not be done; all consumers should pay equal rates for equal access.

IAMU – Low-income assistance programs need to continue in the restructured environment. Policymakers should be given the flexibility to assess the level of need and most effective mechanism for providing the assistance.

MidAmerican – Whatever solution is determined for low-income lowans, it should not be administratively burdensome, not create barriers to market entry, must be allocated fairly between classes of end-use consumers, and must not advantage one supplier over another.

SEED – At minimum, the current low-income bill assistance and weatherization programs should be maintained, with an increase in funding preferred. These programs need to part of the IOWA CODE.