

ELECTRIC UTILITY RESTRUCTURING AND THE LOW-INCOME CONSUMER

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What's at Risk: The Anticipated Impact on Consumer Protections

Restructuring the electric utility industry will have substantial impacts on the offer of consumer protections. Not only will restructuring fundamentally change the way in which consumer protections are offered --often being enforced through the competitive market rather than by regulation-- but will change the nature of the issues to be addressed as well.

The discussion below considers the impact of restructuring on consumer protection issues old and new as well as on the regulatory framework that has been crafted for the benefit of consumers.

The Reliance on Service Disconnections

Consumer protection issues are made more acute as competitive electric companies rely more heavily on the disconnection of service as a collection device.

This concern is based on the reality-based observation that utilities will increasingly refuse to seek work-outs with customers who are facing payment troubles. The observation is "reality-based" if for no other reason than the fact that Southern California Edison has already cited competition as the primary reason to change its collection practices. In that case, Southern California Edison chose to treble its service disconnections (up to one-half million customers in 1995 alone), citing competition as the main reason it was calling in debt.

Consumer Shutoff Protections

One concern of low-income customers involves the explicit consideration of equity issues in electric industry decisionmaking concerning service disconnections and other collection

efforts. Equity concerns exist at two levels. First, equity involves ensuring *procedural* customer service protections. Providing adequate notice prior to the denial of service, ensuring an opportunity to contest a denial of service as unjustified, and requiring a rational connection between the reason for denial and the service itself, are all examples of equitable procedures.

Second, equity involves *substantive* customer service protections. The offer of deferred payment plans through which arrears may be retired over time, as well as protections from the disconnection of energy service during extreme summer or winter weather, are examples of substantive protections.

These procedural and substantive protections find their support in notions of "fundamental fairness" rather than in economics. As a result, ensuring that the actions of utility companies comply with fundamentally fair procedures and principles is certainly not guaranteed by a competitive market.

Billing Disputes and Inquiries

Electric restructuring will offer a bewildering array of places and people to approach if a consumer has a question or a dispute with a particular bill. One likely impact of this array of contacts is the potential for confusion over to whom a consumer must turn to receive answers regarding bill inquiries.

Under the existing system, the location of the billing is at the distribution company. There is a single point of contact for the customer. Under the new framework, it is expected that consumers will buy their "distribution" services from one company and their "generation" service from

another. If the consumer purchases energy efficiency services, that may come from yet a third company.

Consider, also, that under most restructuring proposals, the "meter" will continue to be owned by the local distribution company. The local distribution company will also provide the meter readers. Meter readings will be provided to the actual provider of electric service for purposes of developing a bill.

The potential for confusion is substantial. Consider two common consumer problems. First, what happens when a consumer believes a meter is running "fast," (*i.e.*, is reporting more electricity being used than is actually the case). Is the complaint to be filed with the generation company (to whom the consumer owes money based on the meter reading) or with the local distribution company (who actually owns the meter)?

Second, assume that a consumer in a multiple unit building finds that his or her meter has been "cross-wired" (the meter to Apartment A is, in fact, attached to Apartment B and *vice versa*). Is the complaint to be filed with the generation company (to whom the consumer owes money) or with the local distribution company (who owns the meter)? What if Apartment A and Apartment B buy their power from different electric service providers?

The entire issue of consumer inquiries and disputes presents consumer protection problems.

Unfair Marketing

One aspect of a competitive electric industry that must work appropriately for consumers to benefit is the process of *marketing* by electric service providers. In this sense, "marketing" involves making contact with consumers, making claims as to the products and services that will be provided, and making representations as to the agreements that will govern the relationship between the consumer and the provider.

One aspect of unfair marketing involves

switching a consumer from one service provider to another without their knowledge or permission.

In the telecommunications industry, this practice is called "slamming." A related problem involves service providers who offer information to persons who request it while not clearly stating that the consumer's action will also be considered a "request" to change providers.

Truth in advertising presents separate issues. In one telecommunications case in Illinois, a long distance telephone company promised prospective customers that for one year after signing up, they would pay nothing for a year of long distance phone calls anywhere in the world on Fridays, so long as certain minimum billings amounts were maintained for which customers did pay. After a time, however, the phone company changed its mind and began charging for its Friday calls, albeit at a 25% discount. The court, which ultimately approved the company's action, said that the phone company made the representation as to free Fridays "knowing the representation was false."

According to the court, federal jurisdiction over the long-distance carriers prevailed over any state consumer protection statute. The phone company in this case had filed papers with the Federal Communications Commission (FCC) saying that it was going to change its agreement. Thus, the court said, "whatever the salesman says and whatever is advertised, the consumer can learn the truth from the FCC." As a result, the court held that the phone company's agreement to provide free Friday service could not be enforced. Neither could the consumer obtain damages from the phone company for misrepresentation or fraud.

Payment Disputes

The authority of the distribution company to disconnect service to one retail marketer for nonpayment of a bill to a different retail marketer is another example.

In some states, for example, billing for all telecommunication services is provided through the local telephone company. While that may

seem convenient, it also creates the potential for abuse. A local telephone carrier, for example, may agree to disconnect service to *all* long distance carriers for nonpayment of a bill to any *one* carrier. In these cases, the local phone company simply enters into an agreement with MCI not to provide MCI service if a consumer has failed to pay AT&T. In other cases, the local phone company has agreed to disconnect local service if the long distance bill is not paid. Since the local service is still a monopoly, the threat of local disconnection is extremely coercive.

The allocation of customer payments is another issue that will arise if electric restructuring is permitted. If a consumer's total energy bill is \$100, and the consumer pays only \$80, a basic question arises: whose bill has been paid? The allocation of the partial payment amongst service providers has implications not only from the consumer's perspective (does he or she lose service, and from whom), but from the service provider's perspective as well (who must bear the expense of an unpaid bill).

Regulatory Jurisdiction

All of these consumer protection issues are made greater by the jurisdictional questions that arise in a restructured electric world. If a Houston-based energy company is providing electric service to persons in Pennsylvania, does the state utility commission have the power to regulate that company? What happens if the service provider is only a Denver-based marketer or broker (a company that owns no facilities but only buys and then resells the electricity)? If the electric service provider is an out-of-state firm, is there state jurisdiction or are those issues subject only to federal regulation.

The issue is not hypothetical. One low-income elderly couple in West Virginia had a dispute with AT&T over their long distance telephone bill. The local phone company threatened to disconnect their entire phone service if the AT&T bill was not paid. The state utility commission said that it had no jurisdiction over the inter-state dispute and that the couple would have to file a complaint with the federal agency. The federal

agency, however, had no jurisdiction over local service disconnections.

The couple paid their disputed bill.

Summary

Restructuring the electric industry is going to create significant consumer protection issues, particularly for those who have difficulty in paying their bills. The consumer protection issues will involve the likely cutback in procedural protections, such as shutoff notices. They will involve reductions in substantive protections such as required payment plans and bans on winter disconnections. They will involve jurisdiction disputes, such as that faced by the West Virginia couple who had no place to go to contest the disconnect based on a disputed bill, or the Illinois consumer who relied on a fraudulent misrepresentation about "free Friday" telephone calling.

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