The Regulatory Assistance Project

MODEL ELECTRICITY CONSUMER PROTECTION DISCLOSURES:

A REPORT TO THE NATIONAL COUNCIL ON COMPETITION AND THE ELECTRIC INDUSTRY

Consumer Information Disclosure Project

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with assistance from

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The errors and omissions of the report are those introduced by the authors.

About the Authors

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Forward

The National Council and Its Research Agenda

In November 1996, The National Council on Competition and the Electric Industry initiated its Consumer Information Disclosure Project to assist state regulators and legislators address consumer information needs in a competitive electricity environment. This effort followed on the heels of The National Association of Regulatory Utility Commissioners' November 1996 resolution calling for enforceable, uniform standards that would allow retail consumers to easily compare price, price variability, resource mix, and the environmental characteristics of their electricity purchases.

To implement this resolution, the National Council has initiated a multi-part research agenda. The research agenda is designed to identify and provide state regulators and legislators with technical information, consumer research and policy options. The tasks currently being undertaken are described below. A report, describing the result of the research, will be prepared for each of the tasks. Copies will be made available on the National Council's website as they become available.

Options Identification and Tracking Overview

This task identifies the major disclosure and labeling options for environmental and resource mix. Emphasis for the options focuses on information that is currently available for use in possible labels. The task also identifies the likely mechanisms that could be used to trace transactions from generators through sellers, aggregators, or marketers to retail buyers.

Price and Service Disclosure Generally

This task identifies the major disclosure options for items other than environmental and resource mix — for example, pricing elements, price change formulas, service options, and fixed vs. variable rates. The task focuses on items that might be included in simple labels, (e.g., price) as well as other items such as risk, and important contract terms and conditions that might be provided to consumers in other forms.

Stakeholder Outreach

The National Council has held three regional meetings to collect input from stakeholders on a variety of issues with particular emphasis on suggested label content and format. Other issues included whether label information should be historical or prospective, the required level of accuracy, the treatment of energy efficiency, emission offsets, and allowances, the frequency and location of information, and enforcement.

Customer Focus Groups

This task involves customer focus groups in six states, including focus groups with consumers who have participated in retail competition pilot programs (e.g., New Hampshire). The groups provided feedback on how they perceive competition and on the categories of information consumers want before choosing among electricity suppliers. The groups were also asked for their reactions to different marketing materials.

Baseline Tracking Survey

This task consists of a nationwide telephone survey to collect information about knowledge, attitudes, and practices relevant to consumer decisions about electricity service. This task also establishes national and regional baseline data on the issues.

Disclosure Testing

The purpose of this research is to test labeling options for consumer acceptance, ease of use, comprehensibility, and task performance (i.e., ability to perform label use tasks). Labeling options will be tested in a controlled, experimental setting that simulates realistic use situations to assess label performance quantitatively.

New England Project

This task involves working with PUCs and stakeholders in the six New England states and making recommendations for uniform disclosure requirements.

Large-Scale Pilots

This task involves large-scale testing of disclosure in the context of retail pilot programs to help design and evaluate the testing of different aspects of disclosure. We have had several conversations with Commissions and utilities that are planning retail access pilot programs.

Regional Disclosure Projects

This task applies the experience on the process used in New England to develop proposed uniform disclosure requirements for other regions. In each region, the Council will work with commissions and all other stakeholders to develop uniform disclosure requirements that fit the needs of the regional market.

Consumer Acceptance of Alternative Tracking Approaches

There are two approaches to tracking information used for disclosing information to consumers on fuel mix and emissions. One approach is a contract or settlement approach and the other is tradable tags. Both approaches are described in detail in other National Council reports. A fundamental concern raised about the tradeable tag approach is that it

will suffer from a lack of consumer acceptance. The purpose of this research task is to assess consumer acceptance of alternative tracking approaches and determine whether and to what extent using one approach over the other influences consumer choice.

Executive Summary

Choice is coming. In many states, consumers will soon have to do something they have never thought about before: decide which supplier will provide electricity to their home or business. This means customers will, for the first time, have a reason to compare prices, service options and differing contract terms.

Clearly, the arrival of customer choice carries with it the potential for customer confusion. Is $5 a month and 10¢ per kWh better than $10 a month and 8¢ per kWh? Or $6 and 12¢ per kWh with a 40 percent off-peak discount? Furthermore, the sale of electricity may be bundled with other products, such as alternative meters (which may offer additional energy management services or pricing options) or even with other products, such as Internet access or telephone services.

Recognizing this, the National Association of Regulatory Utility Commissioners (NARUC) in November 1996 urged

"states adopting retail direct access programs to include enforceable standards of disclosure and labeling that would allow retail consumers easily to compare the price, price variability, resource mix, and environmental characteristics of their electricity purchases."

Among other purposes, NARUC announced its belief that "the electric industry should facilitate informed customer choice that will promote efficient markets ..." The full text of this resolution is included in this report as Appendix A.

This report focuses on the uniform disclosure of price and consumer protection information. Other reports prepared by the National Council on Competition in the Electric Industry (National Council) address energy supply and environmental emissions disclosures. Our recommendations rely on information gained at regional workshops on consumer disclosures sponsored by the National Council and convened during June 1997 in Seattle, Minneapolis, and Philadelphia; at meetings from April through September 1997 of the National Council's New England Disclosure Project ; and on consumer focus groups. This report is also based on a review of existing state electric and telephone utility disclosure requirements, rules under consideration in several states to implement consumer choice and competition, and state and federal provisions applicable to other industries, such as consumer credit, home finance, used cars, insurance, and retail sales.

The National Consumer Law Center (NCLC) also conducted a literature search, performed legal research, and gathered additional information from people at and documents published by government agencies involved with disclosure issues. These included the Federal Reserve Board, Food and Drug Administration, Securities and

Exchange Commission, Federal Trade Commission, and several state agencies, as well as numerous public utility commissioners and staff members, state legislators and staff members. consumer advocates, utility and supplier representatives, and assistant attorneys general.

Overview

Residential and small commercial customers will soon be dealing with sellers of two different types of services in a retail electricity marketplace: *electricity* suppliers and *distribution* (transport and local delivery) utilities.[2]

Electricity Suppliers include generators, marketers, aggregators, and brokers who will be marketing electricity supply directly to retail consumers. In some cases, distribution companies will also act as a supplier, as a competitive supplier, or as a regulated supplier of default, or supplier of last resort. Metering and billing for suppliers may be performed by the supplier, the monopoly distribution company or by a separate firm that provides metering and billing on a competitive basis.

Distribution utilities will look like the traditional regulated entity who will provide and bill for delivery and transmission services. In some states the distribution utility will also bill and collect for default service (Provider-of-Last-Resort) and standard offer service.

Our recommendations focus on consumer disclosure and consumer protection issues, especially related to pricing and other disclosures for competitive electricity suppliers. This includes disclosure of key consumer protection policies. The recommendations in this report do not extend to matters that relate to distribution utilities, except to the extent distribution utilities also act as a competitive electricity supplier. Nevertheless, we recommend that regulators review existing distribution utility disclosure to see if it reflects the additional needs of choice and competition.

Our proposed rules and model bill formats do not include the energy supply and environmental emissions disclosures being developed by others. Those disclosure requirements should be added to our proposed rules concerning price and consumer protection policies. In addition, our recommendations assume the continuation of state policies including winter disconnection rules, regulation of late fees and deposits, minimum notice periods prior to cancellation of the contract or disconnection of service, and conventional bill disclosures, such as meter reading dates, how estimated bills are handled, and whether the utility commission's telephone number and dispute resolution policy is stated on the bill. The recommended disclosures are intended as illustrative of these disclosures.

Our objective is to balance simplicity and clarity with comprehensiveness. Toward this end, we recommend a tiering of disclosures. The disclosures customers need first and most prominently should appear in the marketing labels and on the front of the bill. Information consumers need next may appear on the back of the bill. The most comprehensive disclosures are in the Terms of Service brochure — which, we

recommend, is to serve as the written contract between the retail supplier and the consumer. The Terms of Service brochure is provided at the time the contractual relationship is initiated and periodically thereafter.

Items to be disclosed

Price

The ability to compare prices between like products is essential to a well-functioning retail market. In the absence of "apples-to-apples" price information, consumers are more likely to choose not to choose.[3] At present customers are used to receiving a single "all-in" bill and they have no reason to be familiar with the differences between electricity and transport charges. Customers also are used to relative price stability in the bills they receive for electricity. In order to become knowledgeable shoppers, they will have to learn to distinguish between competitive and regulated services and to recognize and shop among a variety of price terms. In an effort to use consumer-friendly terms, we label the unbundled bill elements as *electricity* (generation or energy), *transport* (transmission), and *local delivery* (distribution, access, customer charge, and other state-regulated charges). These terms are used throughout this report.

The consumer research performed by The National Council indicates a strong interest in price information and a real potential for confusion in the way price is disclosed.[4] Customers prefer a simple total bill amount or price per kWh for both electricity and local delivery/transport services. This simplicity is probably not practical to provide in a market in which suppliers advertise across boundaries of various distribution utilities and want to use uniform billing formats and disclosures in a region or state. Furthermore, since the local delivery/transport portion of the bill will remain regulated, consumers will not shop for that portion of the service. It will thus be important to focus consumer attention on the electricity (generation) portion of the bill where comparative shopping will be fruitful.

To respond both to these price concerns and the importance attached to them, the proposed disclosures recommend prominent price disclosure in advertising materials, and the Terms of Service brochure which customers will receive at the time they agree to become a customer of a particular supplier. This disclosure, particularly if accompanied by a right of rescission within three to five days of receipt of the brochure, will allow customers to make sure that the pricing terms are as they understood them in the marketing materials.

Recently completed consumer research by The National Council tested consumers' ability to use price information given in various forms including average price per kWh and average total monthly bills. Consumers were tested in their ability to perform simple calculations to find the lowest cost products and to determine what the monthly bill would be at two different usage levels. The price options included displaying simple block rate designs (e.g. $10 per month plus 3 cents a kWh for the first 500 kWh and 4 cents for all use over 500 kWh), average prices per kWh at three different usage levels and, average monthly bills at three different usage levels. The study found that consumer

performance was substantially improved when all products displayed price information in the same manner. Consumers also performed best when average monthly bill formats were used. They performed worst when block rates were displayed.[5]

By itself, this study suggests that uniform price disclosure in the form of average monthly bills should be used with average kWh price information a close second. However, we expect that the marketing of electricity will most likely focus on price per kWh and that sellers will feature price per kWh in their advertising materials and media messages. Requiring labels with average monthly bills and without average price per kWh would probably be confusing. Reporting both in a uniform label may violate the goal of simplicity. Thus, we have a slight preference for the use of average prices per kWh required uniform labels.

The disclosure should be provided in a cents per kWh format. While suppliers may actually price their product with a mixture of fixed and variable prices, as well as time or day and seasonal differentials, consumers cannot easily determine the impact of these various pricing schemes on their monthly bill.[6] Our recommendation is similar to the concept adopted in the Truth in Lending Act in which interest charges are uniformly disclosed as an Annual Percentage Rate (APR). The APR must be calculated according to a uniform methodology which takes into account the fixed and variable features of the creditor's interest rate plan. Price disclosure does not control how suppliers price. Rate designs may be simple or complex. Price disclosure translates supplier's rate designs into a uniform cents per kWh format, thereby simplifying price comparisons. Consumer research shows this simplification is essential for consumers to identify the supplier and product of choice.

To relate the fixed and variable aspects of the supplier's electricity charges to actual monthly bills, the cents per kWh disclosure should be provided at four typical usage levels. Inclusion of prices for typical price levels enables the customer to find the usage level closest to his or her own level and also to anticipate how the bill would change if the household's usage changes. This goal can be best achieved by providing a broad range of typical usage levels, such as: small (300 kWh), general (500 kWh), water heating (900 kWh), space heating (2000 kWh). Showing average prices at a wide range of usage levels also allows customers to determine which rate designs perform well at a particular usage level.

The unit pricing of electricity should also be provided on the customer's bill, whether issued by the distribution company on the supplier's behalf or by the supplier directly. At this point, the customer's usage is known and the unit price should be disclosed as the actual, average price in cents per kWh charged by the supplier for the customer's usage for that billing period. Over time, the customer can then become familiar with the actual cost of the particular supplier's price design on his or her actual usage pattern. The customer's historical usage pattern should also appear on all supplier bills.

Unit pricing of consumer goods[7] occurs throughout the economy and has become a widespread requirement that consumers have learned to rely upon. Many states, for

example, require food products to be labeled with unit prices so consumers can make product-to-product price comparisons. The results of the 1997 New Hampshire electric competition pilot program confirmed that customers want uniform price disclosure. Suppliers who marketed to customers in this pilot were not required to make any disclosures. Perhaps as a result, New Hampshire focus groups expressed their frustration with pricing that defied "apples-to-apples" comparison. A poll conducted for the New Hampshire Public Utilities Commission found that 84 percent wanted uniform price information; 71 percent of those changing suppliers said price was a strong factor. In its Final Plan, the New Hampshire PUC required that customer bills disclose prices and price components so that customers can readily calculate charges using information provided on the bill.[8] Rather than require consumers to calculate their average price per kWh, our proposal provides this information automatically to all consumers.

Because price is such an essential piece of information, State regulatory agencies may want to require that all marketing materials contain a prominent display of the recommended average price per kWh terms. Regulators may also want to consider exercising prior approval of these materials.

Variability of Price

Price variability is one of the key elements identified by both NARUC and focus groups. This essential information is provided by disclosure of both the basis for variation (e.g., spot markets, fuel, CPI) and a price history, in much the same way as variable rate mortgage information is disclosed.[9] Because of the importance attached to these disclosures, they appear prominently on the price disclosure label on the Terms of Service brochure with more detailed explanations in the brochure itself. The customer's monthly bill should also disclose whether the contract has a fixed or variable price, and if the price is variable, how the price has changed that month. All advertising should disclose the fact that the price is subject to change during the term of the contract (without historical information). The brochure should also include all other charges.

Time-of-use rates may also be a new pricing term for many customers. Marketing materials, Terms of Service and billing disclosures for such time-of-use products should require unit pricing at the average on-peak/off-peak patterns for average load profile for the customer's class.[10] The Terms of Service should also identify the on-peak and off-peak periods. With respect to conservation or energy management services, the supplier may separately disclose the likely impact of these services on the customer's overall electricity bill, but this disclosure must be based on a thorough evaluation of the energy (and capacity) savings of the services provided for the particular region of the country.

Electricity Sold With Other Services

Public input workshops on information disclosure held in Seattle, Minneapolis, Philadelphia, and discussions of the New England Disclosure Project raised additional complications regarding price disclosure. How should price be disclosed when products unrelated to electricity, such as telephone service are bundled with electricity? It will be

difficult for customers to figure out the stand-alone price of electricity or to compare different offers where suppliers offer electricity solely as part of a bundled product carrying a single price.

There are several disclosure options:

1) The supplier could be required to disclose the price of electricity at that price which he would be willing and able to sell on a stand alone basis. This option works very well when the supplier is willing to sell electricity separately, but does not work when the seller does not sell the bundled products separately

2) The supplier could be required to disclose the entire monthly price as a function of the price of electricity, i.e., 1,000 kWh for $50 or $.05 per kWh. This option would also allow the supplier to list those services or products included in the total price. This would allow customers to compare the price of all products which bundled electricity with the same or similar services. This option would not help consumers compare and value the price of any one part of the bundled mix.

3) The supplier could be required to disclose the price of electricity based on its "fair market value" for the sale of residential (or commercial) electricity in the particular area. Under this approach, suppliers will be tempted to name the price for the electricity portion of the product as low as they legally could. [11] This could end up misleading consumers and substantially weaken their ability to comparison shop. This option would also require some agency, whether it is the state commission, the Attorney General or the FTC, will have to hear and adjudicate complaints.

For more discussion of this issues see Appendix B, which excerpts from The National Council's Report on Uniform Disclosure Standards for New England (pp.11-13, November 1997.) That report rejected the third option and recommended that suppliers be given the option to disclose price either by rolling the cost of all goods into the price of electricity or by disclosing the same price for both the bundled and unbundled version of the product.

Many sellers have offered one time premiums or other inducements (e.g. $25 in cash, a birdfeeder, etc.) To entice consumers to select their service. Consumer focus group research suggested that these inducements should not be reflected in price calculations. Consumers are able to take this types of offers into account. Thus we recommend that one-time inducements or premiums not be computed in disclosed prices. They, must, however, be described and valued in the Terms of Service brochure.

Non-electricity Price terms and Disclosure of Customer Protections

Other information desired by focus group participants included consumer complaint incidence and procedures for resolving disputes. We propose that all bills (on the back) and Terms of Service brochures contain information about dispute resolution and, where applicable, reference to the public utility commission as mediator. We recommend

commissions publish an annual report on all licensed energy suppliers and utilities with the complaint ratio of each supplier and utility. This information should reflect customer calls to both the utility commission and state Attorney General. as well as any formal enforcement actions that were taken in the prior year.

NCLC research and experience, as well as the workshops in Seattle, Minneapolis, Philadelphia, and discussions of the New England Disclosure Project, raised additional disclosure issues.

•Customers need to know the consequences of their default, especially the potential for late charges and, eventually, cancellation of their contract. Most customers are aware of the potential for disconnection for nonpayment for regulated charges billed by the distribution company. However, our recommendations assume the customer cannot be disconnected or threatened with disconnection for the failure to pay for the unregulated supplier charges.[12] Bills issued by suppliers (or by distribution companies on behalf of suppliers) should inform the customer of the contract cancellation notice and procedures. The distribution bill and, if applicable, the supplier bill should continue to inform customers about the right to a payment arrangement and the time period within which payment must be made to avoid a notice of cancellation or disconnection. The due date to avoid late fees or further collection efforts should appear on the front of the bill. The back of the bill should contain information about dispute procedures, and collection procedures.

•The Terms of Service brochure explains rules with respect to deposits, catchup bills, and the availability of default service.

•Many customers do not know about protections available to them. Protections may include low-income payment programs, winter rule protections, the right to a payment arrangement, and energy management services. These programs vary among the states and the bill should disclose their availability as appropriate and a contact telephone number for further information. Depending on the state and the provisions, disclosure should be required by suppliers, distribution companies[13] or an independent statewide administrator.[14] For example, low-income discount rates typically have a penetration rate of 50 percent or less. Therefore, a listing of available protections and discounts is published on the back of the bill together with a toll-free number for more information. The objective is to provide simple notice that protections exist and encourage inquiry to obtain detail. Similar information is commonly disclosed in many states.

•Customers will need to know the length of the contract and the early termination penalties, if any. This important information should be highlighted as part of the Terms of Service brochure and indicated as well on the front of the bill. Many customers have complained about the terms of certain cellular telephone contracts where an up-front, free cellular phone is promised in return for a service contract with a minimum duration of several years. This same approach may occur, especially if suppliers can offer customers alternative meters as part of their electricity services. Furthermore, some states may set a

minimum term for Last Resort Service. They seek to require a minimum contract term or early termination penalty in such situations.

•"Slamming," the unauthorized switching of suppliers, is the largest source of complaints to the Federal Communications Commission emerging from telephone competition. Appropriate disclosures to respond to slamming depend on the rules chosen to regulate slamming.[15] For example, if a code is required to confirm the identify of a customer, then the code should be printed on the distribution utility's bill. Similarly, rules may require that an order to switch be in writing and include a peel-off label that is provided with the distribution utility bill to be affixed to the ordering contract. To order electricity supply, the consumer would peel off the label from the distribution utility bill and affix it to an order for supply service. In this way, verification would be provided that the customer had placed the order. The purpose of this report is not to propose substantive anti-slamming rules, but rather to suggest disclosures that further the anti-slamming policies.

•Conventional utility and consumer transaction disclosures should be retained, including provision of a toll-free 24-hour telephone number for service problems, disclosure of the use of credit reports,[16] a statement of warranty limits and disclaimers,[17] and disclosure of all other material terms and conditions.[18]

When and Where Should Disclosure be Made?

To be meaningful and effective in the promotion of competition, disclosure — especially price disclosure — should occur as early as possible in the consumer's comparison shopping. Thus, advertising requirements[19] are preferable to disclosures that are only required at the time of contracting. Similarly, requiring at least a few basic disclosures — principally price, price variability and term of contract — in all advertising is preferable to making the disclosure obligation contingent on a particular advertising claim. Advertising includes all media sources including direct mail, telemarketing, and the Internet.

Advertising can appears in writing, orally and visually. Our proposal does not require the use of a mandatory Electricity Label for oral or visual advertising on TV and radio, although it may be practical and desirable to require some type of minimal disclosure for these media.[20] However, all such advertisements should be required to inform consumers that an Electricity Facts Label is available and should be consulted to determine the impact of any offer on a specific customer's usage pattern. This approach is similar to the mandatory reference to the prospectus that accompanies any offer to sell securities.

The next most useful time for disclosures is when the customer receives a Terms of Service brochure either upon request or shortly after agreeing (either in writing or orally) to become a customer of a particular supplier. This disclosure must appear within several days of initiation of the contract, and it will be most effective if it is accompanied by a right of rescission which would allow the customer to cancel the contract without penalty within a certain time period, usually three business days.[21]

The monthly bill is the next most useful disclosure point, although by that time the customer has probably become contractually bound, particularly if there is a minimum contract term or an early termination penalty. However, periodic disclosure of continuing consumer protections provides important information when it is needed. Therefore, the bill disclosures seek to translate the customer's promised price and rate design into the actual price per kWh charged for the usage during the current monthly period. This disclosure will then allow the customer to track usage and price in a manner that is relevant to the customer's actual, not hypothetical, usage pattern. At that point the customer can take action to change suppliers if necessary.

We also recommend the Terms of Service brochure be provided to consumers twice a year to assist the customer in comparing the current contract with other offers in the competitive marketplace.

What Should the Disclosures Look Like?

Focus group research has confirmed that consumers tend not to read labels in detail and are interested in simplicity. The proposed bill, brochure, and advertising formats attached to this report reflect an effort to balance the goal of simplicity with the need to provide essential information discussed above.

Several states have addressed the need for simplicity in consumer transactions by enacting statutes calling for "plain language" and "clear and conspicuous" disclosures. Enacted statutes and rules have included broad requirements of clarity[22], specified detailed guidelines, and even given exact language to use.[23] Obviously, the more specific rules are more constraining but also less likely to be misunderstood or to engender the kind of disagreement that results in litigation.

Established guidelines include:

- short sentences and paragraphs
- everyday words
- personal pronouns to refer to contracting parties
- simple and active verbs[24]
- present tense[25]
- short words
- no technical terms
- no Latin or foreign words or words used with obsolete meanings

• maximum one condition per sentence

• no double negatives[26]

There are even more specific tests in some states, such as the Flesch Reading Ease Test: number of words divided by number of sentences, result multiplied by 1.015; add to this the number of syllables, divided by the number of words, all multiplied by 84.6; subtract this total from 206.835. The result must be 40.[27] Another objective test, allowed in Connecticut in place of its more general plain language requirement includes: less than 22 words per sentence and 75 per paragraph on average, maximum 50 words in a sentence and 150 in a paragraph, average less than 1.55 syllables per word.[28]

The plethora of plain language requirements reflects a consensus that consumer protection requires contracts and disclosures that are easily understood. By specifying a "safe harbor" model form of disclosure, policy makers make the job of complying easier for sellers. The model provides sellers a method of compliance that is not unduly burdensome. For this reason, the model bill, brochure, and advertising label are provided as compliance options.

There is also consensus around certain physical formatting requirements that make the specified disclosures more easily understood. These include use of ten point type[29] and sharp contrast between disclosure and background.[30] For audio disclosures, general Federal Trade Commission regulations require they be at "a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement" and that the disclosures be delivered "at a reasonably understandable volume" that is at least at the same level as that principally used in the advertisement. TV and video disclosures must be in a color or shade that readily contrasts with the background. No audio or video technique may significantly detract from the disclosures.[31] The proposed rules reflect these requirements.

Enforcement[32]

The first line of enforcement should be the utility regulatory agency, which has the strongest immediate stake in the success of competition as a means of controlling prices. Necessary tools include fines and license suspensions with respect to suppliers, adjustments in the authorized rate of return for regulated utilities.

In addition, violation of disclosure rules could be explicitly made a violation of the state's Unfair And Deceptive Practices (UDAP) Act,[33] which gives the state Attorney General (and, often, private litigants) enforcement authority. This can be accomplished by joint action with the Attorney General or may, in some states, require legislation. Care needs to be taken in drafting this legislation to assure the utility regulatory agency retains full authority over these issues and is not preempted by jurisdiction of the state Attorney General or other agency.

Consumers, their advocates, and competitors will probably also police disclosures and bring violations to the attention of those with enforcement authority. The utility commission will be in a position to carefully analyze such complaints and determine if a pattern of violation exists and whether more formal enforcement action should be undertaken.

Model Rules for Suppliers who are not Distribution Utilities

Advertising Materials

A. A bold font box labeled "Electricity Facts" which contains the following disclosures shall be included in any printed advertisement or marketing materials:[34]

1. Where the price offered is fixed during the term of the contract, the average charge, expressed as cents per kWh for electricity for usage labeled as:

•"small usage (300 kWh),"

•"general use (500 kWh),"

•"water heating (900 kWh)," and

•"space heat (2000 kWh)."

Where billing is based on season or time of day, the price shall be shown for each usage category using a usage profile based on regional or statewide data.

2. A statement about the variability of the contract price for electricity. If the price is subject to variation during the term of the contract, a description, of the basis for and frequency of price changes (if any) during the contract period, such as "varies with U.S. Consumer Price Index," or "varies with time of day and time of year". If the contract price does not vary, the disclosure shall state "fixed price".

3. If the price is subject to variation during the term of the contract, the supplier shall disclose the historic price information based on the most recent 12-month period. If this information is not available for a full year, the historic price information should be stated (a) for a full year as if the offered terms and conditions were in effect or, if that is not possible (for example, because the index does not have one year of history), (b) for as long a period as data are available. The nature of the data disclosed shall also be disclosed, e.g., "Price Range In Last Year If Offered Terms and Conditions Had Been in Effect," or "Price Range In Last Six Months (Longest Period Available)."

4. Where billing is based on season or time of day, identification of the on-peak season or times.

5. Where conservation services are offered in conjunction with electricity services, the supplier may provide a separate price disclosure based on the effect of these services in comparable climates and dwellings. The intent is to show prices for equivalent service where conservation service is substituted for electricity service.

6. Where any other product is bundled in the price, the price for electricity shall be separately disclosed.

7. The value of one-time premiums shall not be factored in prices.

8. Minimum contract length or duration.

9. Whether there are any charges or penalties to cancel service before the end of the minimum contract length.

10. Material exclusions, etc.

B. Any TV or radio advertisement that contains a price for an electricity product shall contain the following statement: "You have the right to obtain an Electricity Facts Label that will allow you to compare prices and other important facts among suppliers. Call _____ for your Electricity Facts Label."

Terms of Service Brochure

The brochure shall serve as the contract between seller and buyer. The brochure shall contain a statement on the front that it contains important information that is available in other languages by calling a specified toll-free telephone number; this statement shall be provided in English, Spanish, Chinese, Vietnamese, French, Polish, Russian, ..., [OR: every language that, according to the latest Census, is spoken by more than percent of customers in the state]

Contract initiation

A. The brochure must contain a bold font box labeled "Electricity Facts"(see Figure 1) which contains the following disclosures:

1. Where the price offered is fixed during the term of the contract, the average charge, expressed as cents per kWh for electricity (supply or generation or energy) for usage labeled as:

•"small usage (300 kWh),"

•"general use (500 kWh),"

•"water heating (900 kWh)," and

•"space heat (1500 kWh)."

Where billing is based on season or time of day, the average charges shall be shown for each usage category using a usage profile based on regional or statewide data.

2. A statement about the variability of the contract price for electricity. If the price is subject to variation during the term of the contract, a description, of the basis for and frequency of price changes (if any) during the contract period, such as "price changes every six months based on the U.S. Consumer Price Index," or "price changes based on time of day and time of year". If the contract price does not vary, the disclosure shall state "fixed price".

3. If the price is subject to variation during the term of the contract, the supplier shall disclose the historic price information based on the most recent 12-month period.

If this information is not available for a full year, the historic price information should be stated (a) for a full year as if the offered terms and conditions were in effect or, if that is not possible (for example, because the index does not have one year of history), (b) for as long a period as data are available. The nature of the data disclosed shall also be disclosed, e.g., "Price Range In Last Year If Offered Terms and Conditions Had Been in Effect," or "Price Range In Last Six Months (Longest Period Available)."

4. Where billing is based on season or time of day, identification of the on-peak season or times.

5. Where conservation services are offered in conjunction with electricity services, the supplier may provide a separate price disclosure based on the effect of these services in comparable climates and dwellings. The intent is to show prices for equivalent service where conservation service is substituted for electricity service.

6. Where any other product is bundled in the price, the supplier must state the price for electricity separately, if sold separately, or state the total price for the unbundled products as that of electricity.

7. The value of one-time premiums shall be stated but shall not be factored in prices.

8. Minimum contract term or length.

9. Whether there are penalties to cancel service before the end of the minimum contract period.

C. The supplier's policy with respect to deposits, including whether required, conditions for return of deposit, interest rate paid on deposit, and method by which interest is paid.

D. A description of the supplier's policies with respect to consumer rights with respect to estimated meter readings, late payments, late fees, fees that may be charged to the customer for returned checks and all other fees and charges, the availability of payment arrangements, special programs for low income customers, and the supplier's collection policies if the customer is unable to make payment in full in a timely manner. This disclosure shall include a description of the Notice of Cancellation and other collection methods employed by the supplier, including third party debt collection, reporting unpaid debt to consumer reporting agencies and use of Small Claims Court or other legal debt collection methods, where applicable.

E. A statement about the use of credit reports, in compliance with the Fair Credit Reporting Act.

F. A statement about limitations on and disclaimers of warranties, in compliance with state law, including the Uniform Commercial Code.

G. The supplier's dispute or complaint handling policy, including a toll free number where customers can call for questions or complaints. The supplier shall also inform the customer of their ability to contact the state public utilities commission (including toll-free complaint hotline, if any, operated by the state commission) for information about any licensed supplier and to file a complaint or dispute concerning the activities of any supplier.

H. A statement about how the customer can cancel the contract, with all applicable notice provisions and penalties or charges for early cancellation.

I. All other material terms and conditions, including but not limited to exclusions, reservations, limitations and conditions of the contract offered by the supplier.

J. In a bold font type, the customer's right to cancel the contract within three days of receipt of the Terms of Service brochure without penalty or further obligation with a description of the method that the customer can use to cancel the contract and the mailing address or telephone number where this can be accomplished. The front of the Terms of Service brochure must inform the customer of the location of this disclosure, in the brochure.

Semi-Annual notice

At least semiannually the supplier shall issue to each of its residential and small commercial customers a Terms of Service brochure or bill insert that contains Items A, B, C, D, F, G, I and J.

Annual notice

Once yearly the supplier shall issue to each of its residential and small commercial customers a Terms of Service brochure or bill insert that contains Items A through J.

Notice of cancellation of contract

The supplier shall inform the customer at least ___ days prior to cancellation of the contract due to a default by the customer. The notice shall inform the customer of the following:

A. The reason for the contract cancellation.

B. How the customer can avoid cancellation.

C. The amount of all fees or charges for early contract termination pursuant to the Terms of Service disclosed to the customer at the time of the initiation of the contract.

D. The amount overdue.

E. toll free telephone number the customer can call to discuss the Notice or file a complaint, and the supplier's obligation to suspend cancellation activities to investigate the customer's complaint concerning a disputed amount.

F. The customer's right to obtain Provider of Last Resort Service and the telephone number of the Provider, as well as the customer's right to obtain electricity services from another licensed supplier.

G. The availability of deferred payment arrangements, budget billing, extreme weather protections, illness protections, and low-income discounts.

H. The collection activities that the supplier will initiate if the customer does not pay or make acceptable arrangements with the supplier, including the use, if used by the supplier, of debt collection agencies, small claims court and other legal remedies allowed by law. At no time must the supplier imply that the customer's ability to access the electric distribution system will be affected by the customer's nonpayment.

I. The Commission's complaint number and the statement, "If you are not satisfied with our response to your inquiry or complaint, you can call the state agency that licenses electricity suppliers and file a formal or informal complaint by calling the following

telephone number, ---------- or writing to the following address....."

Monthly Bill

A. Use of the sample bill and brochure formats shall be compliance with this section.

B. Bill front. The following information must be contained on the front of every bill to every residential and small business customer without a demand meter or with a demand of less than _____. These disclosures must accompany any writing issued by the supplier that informs the customer about the amount due on a current account or that confirms an automated billing transaction, and in any event, no less than monthly.

1. Name and address of the supplier and the supplier's license or certificate number issued by any state regulatory authority,

2. Customer's service address,

3. Account number,

4. Price plan described in plain language,

5. Service period for which the bill is rendered,

6. Date the bill is rendered,

7. Date payment must be made to avoid a late charge or other collection action, specifying whether this is date of mailing, date of receipt or date of payment to agent,

8. A toll-free telephone number the customer can call during specified hours for questions or complaints about the bill, in a bold type font,

9. Meter identification number, if provided by the distribution company,

10. Whether the bill is based on actual, estimated, or customer reading of meter,

11. The meter reading on which the bill is based and the next previous reading.

12. The usage for which the bill is rendered, the customer's usage for the prior 12 consecutive months or, if not available to the supplier, the number of months that the supplier provided service to the customer, and the actual average cents per kWh paid by the customer for each month for which the historical usage is provided[35],

13. Balance on the next previous bill, payments since that bill, and balance due (if any),

14. The charges for which the bill is rendered; including an itemization of each element or product showing the rate, charge, and provider for each element; as well as the total of all current charges,

15. The customer's historical use for the most recent 12 months,

16. A box or other typographically separated graphic labeled, "Billing Facts" and which contains:

a. The average unit price of the current electricity charges for the current billing period, expressed in a cents per kWh form;

b. A statement concerning the term of the contract and a reference to any applicable early termination charges[36];

c. A statement whether the contract price is fixed or variable. If the price is variable, the basis for price changes must be stated, including the differential pricing based on time of day or time of year or contract price subject to an index. If the price of electricity is fixed during the term of the contract, this statement must be provided; and

d. A statement that the bill contains the charges for electricity only and that the customer must also obtain transport and delivery service from their local distribution utility.

16. The information required by anti-slamming rules, e.g., a unique identification number or peelable label.

C. Bill back. The following information must be contained on the back of every bill or a separate page included with the bill:

1. A statement that states the supplier's policy with respect to past due payments, applicable late fees, and methods by which the customer can make payments;

2. A statement of the consequences of nonpayment, specifying the time at which events occur, including, but not limited to, when a notice of cancellation of the contract will be mailed. In addition, the supplier shall disclose whether the customer can negotiate a payment arrangement or qualify for additional billing options, such as budget billing.

3. Unless already provided on the front of the bill, a toll-free telephone number, in a bold font, that customers can call 24 hours a day to talk with a company representative about service problems or complaints,

4. A statement that describes the supplier's complaint handling process and the customer's right to avoid collection action by filing a timely dispute. If the complaint hot line is different from the number disclosed on the front of the bill, that number should be provided in bold type,

5. A statement that refers the customer to the Terms of Service brochure for further detailed information, and

6. If the supplier requires deposits, the conditions that will trigger a request for a deposit, its maximum amount, whether interest will be paid on the deposit amount and the amount of such interest, and the conditions under which the customer can obtain a refund of a deposit.

Model Rules for Distribution Utilities That Serve as the Electricity Supplier or that Bill for the Electricity Supplier

Monthly Bills

A. A distribution utility must disclose the same information as required for suppliers if the distribution company bills for electricity services on behalf of any supplier or bills the customer for Provider of Last Resort Service.

B. The disclosures provided on behalf of any suppliers must be conspicuously labeled with the name of the supplier and graphically separated from the distribution portion of the bill. A distribution company that provides a separate page for the supplier portion of the bill shall comply with this provision.

C. With respect to the distribution (i.e., regulated) portion of the bill, the distribution company shall, in addition to any other requirements for utility bills as set forth in the rules and regulations of the state public utility commission, include the following information:

1. Bill front. The following information must be contained on the front of every bill to every residential customer and small commercial customer with no demand meter or less than ___ kW demand,

a. Typographically separated, the separate charges for each distribution and transmission service, any unbundled charge specified by the Commission (transition charge) and the total of all regulated charges.

b. The total of all charges, including those billed by the distribution company for others.

c. A statement of the average unit price for the current regulated charges on the bill.

d. The customer's usage per month (including percentage on-peak, if applicable to the distribution company's rates) and average cents per kWh charges for at least the previous 12 calendar months.

e. The information required by anti-slamming rules, e.g., a unique identification number, a peelable label.

f. The amount of any late fees, if applicable.

2. Bill back. The following information must be contained on the back of the bill:

a. A statement describing how partial payments are credited if the distribution company bills for any unregulated or competitive charge.

b. A statement of the consequences of nonpayment, specifying the time at which events occur, except that this statement shall distinguish between the regulated and unregulated charges in describing the collection action that will be taken by the distribution company and supplier.

c. A toll-free telephone number, in a bold font, that customers can call 24 hours a day to talk with a company representative about service outages, if different from the toll free number that appears on the front of the bill.

d. A statement that about the availability of payment arrangements, alternative payment plans, and any special protections that may exist during the winter period for customers to retain the distribution portion of their service.

e. A statement about how to complain about a bill, the provider's internal appeal process, and that the customer can appeal any question or complaint to the state public utilities commission if not satisfied with the response of the provider, including the regulator's telephone number for appeals and complaints.

f. A notice of programs and services available to low income customers, including discounts and conservation programs, and toll-free telephone number (in a bold font) customers can call to obtain the protections and discounts, if different from the telephone number on the front of the bill.

g. Notification of how to retain service in the event of a medical emergency.

h. The following statement: "You have the right to obtain a Provider of Last Resort" electricity service if you cannot obtain electricity service from a licensed supplier. To find out the price for this service and how to apply, call ----------.

Terms of service

A distribution company shall issue a Terms of Service brochure which is the contract between seller and buyer. The brochure shall contain:

A. the same disclosures required by suppliers, at the time the customer initiates Default or Provider of Last Resort Service.

B. A statement of how to obtain default service,

C. A statement of the availability of no-cost or low cost conservation services available from the distributor along with a toll free number consumers can call for more information,

B. A summary of the customers' rights and responsibilities concerning delivery and transportation services, at least annually.

Provisions Applicable to Suppliers and Distribution Utilities

Disclosure Format

A. Charges for each element of each service , and each service, must be separately stated in standard pricing units.

B. The term "electricity": shall be used for supply, generation, or energy.

C. The term "transport" shall be used for transmission.

D. The term "local delivery" shall be used for the combined charges for distribution, access, customer charges, and all other state-regulated periodic charges.

E. All disclosures must be clear, conspicuous, and coherent.

F. All disclosures must be written in plain, easily understood English. This includes the following requirements:

1. Short sentences and paragraphs,

2. Everyday words using commonly understood meanings, with no technical terms, Latin or other foreign words, or words used with obsolete meaning,

3. Simple and active verb forms,

4. Present tense,

5. No double negatives, and

6. No sentence with more than one condition.

G. All disclosures must be made available in all languages spoken by a significant number of customers in the State.

H. Except where otherwise provided, all disclosures must be in type that is at least 10 points.

I. All disclosures must be in a color that contrasts with the background to the same degree as black type on white paper.

Enforcement

A. The Commission may order compliance with these rules by utilities and suppliers.

B. Each failed disclosure to each customer is a separate violation.

C. Each violation is subject to a penalty of $____.

D. Each violation with respect to each customer is subject to a rebate to each customer of $__.

E. The Commission may suspend or revoke the license of a supplier that demonstrates a pattern of violations.

F. The Commission may set the regulated return at the low end of a reasonable range where a utility demonstrates a pattern of violations.

Commission report

The Commission will periodically publish a report which will, at a minimum, contain a listing of all the suppliers licensed to sell electricity at retail in the state, their name, telephone number and address, the supplier's complaint ratio (calculated based on the number of customer complaints received by the commission and the volume of electricity sold in the state or the average number of customers, whichever is known by the commission) and any enforcement action taken or initiated by the commission during the prior year with respect to any supplier.

Model Bill

The following shows a typical bill (front & back) issued by a competitive electricity supplier for residential and small commercial customers.

Bills issued by distribution companies that also provide electricity or bills issued by distribution companies on behalf of competitive suppliers might contain additional information, but would otherwise be very similar.

Your Supplier
Street Address, City, State ZIP, Telephone number

You
Service Street
City, State ZIP

Prior Balance $0.00
Payment Received $0.00
Current Charges $0.00

Account number:000000000

Amount Due $0.00

Date Due: 00/00/00

PRICE

Peak use (10 am to 6 pm, July and August, except holidays) ___kWh @ ___¢/kWh
Off Peak use (all other hours) ___kWh @ ___¢/kWh

TOTAL ___kWh

Average Price ___¢/kWh Amount Due $0.00
Your average price will vary according to your actual usage pattern.

Billing Facts

CONTRACT TERMS

The contract lenghth is monthly. It will be automatically renewed unless we hear from you. There are no early termination charges.

COSTS EXCLUDED

This bill does NOT include charges for use of wires and local delivery system charges which will be billed by your local utility.

If you have any questions about your bill, call 1-800-power between 7 am and 9 pm

Account Number:000000000000 Rate: Residential Billing Date:00/00/00
Service Period: 00/00/00 through 00/00/00 Number of days: 30
Meter Number: 123456
Begin date: 00/00/00 Begin reading:00000000
End Date: 00/00/00 End reading:0000000

Your Electricity usage in kWh

	12/97	11/97	10/97	09/97	08/97	07/97	06/97	05/97	04/97	03/97	02/97	01/97	12/96
Daily	00	00	00	00	00	00	00	00	00	00	00	00	00
Monthly	00	00	00	00	00	00	00	00	00	00	00	00	00

BILL BACK:

Your payment must be received by the due date stated on the front of this bill to avoid late charges. We charge a late fee of 1.5% per month or 18% per year.

If you do not pay your bill in full, we can send you a Notice of Cancellation of Contract at least 10 days before the contract is canceled. Call us to discuss your payment problems. We want to be your electricity supplier. We will not cancel your contract while a dispute is pending about any portion of your bill. Call the number on the front of this bill. If you are not satisfied with our response, you can call or write to the state public utilities commission, [address and toll free number].

We do not require deposits. {OR: Your deposit will be returned if you pay by the due date for six months in a row. We will credit your account with interest on your deposit at the rate of 12% per year.}

Service Problems? We will help you with any aspect of the electricity service we provide to you. We will refer you to your local distribution utility to report any outages or problems with your power.

NOTICE OF PROTECTIONS AND DISCOUNTS

You are entitled to a **discount or payment assistance** from your distribution utility if you receive one of the following public benefits: food stamps, medicaid, transitional assistance, LIHEAP, SSI. You will also be eligible for **energy conservation** services that will reduce your bill. Call your local distribution company for further information or call us and we will refer you.

If a **landlord** fails to pay the bill for the common areas of the building, tenants may pay the bill and deduct the amount from their rent. Alternatively, tenants may transfer the bill to their own name and pay only future bills and deduct those payments from their rent.

TO RECEIVE ANY OF THESE PROTECTIONS, CALL **1-800-COMPLAIN**.

IF YOU ARE NOT SATISFIED, CALL **1-800-GET-HELP**.[regulator]

APPENDIX A: RESOLUTION OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS (1996)

RESOLUTION IN SUPPORT OF CUSTOMER "RIGHT-TO-KNOW" AND PRODUCT LABELING STANDARDS FOR RETAIL MARKETING OF ELECTRICITY

WHEREAS, at least 30 million consumers in six states will begin choosing among competitive

electricity providers in early 1998 and retail access to competing electricity suppliers is under

consideration in many other states; and

WHEREAS, electricity purchases make up a significant portion of the budget of many households;

WHEREAS, the production of electricity imposes very substantial environmental impacts; and

WHEREAS, pilot retail access programs have shown that customer confusion and misleading

claims are highly likely; and

WHEREAS, clear and uniform disclosure will promote efficiency through informed product

comparisons; and informed customer choice cannot occur in a retail electricity market without full

disclosure of all relevant and important facts; and

WHEREAS, the desirability and feasibility of such disclosure is clearly established in nutrition

labeling, uniform food pricing, truth-in-lending and many other federal consumer protection

programs; and

WHEREAS, the National Association of Regulatory Utility Commissioners (NARUC) at its

November, 1994 meeting adopted a resolution on competition and stranded benefits calling for new proposals to preserve environmental and diversity benefits in a more competitive marketplace: and

WHEREAS, The NARUC at its July, 1996 meeting adopted principles to guide the restructuring of the electric utility industry which included market-based mechanisms to promote effective consumer choice and to preserve renewable resources, resource diversity, and environmental protection; now therefore be it

RESOLVED, that The National Association of Regulatory Utility Commissioners (NARUC),

convened at its 108th Annual Convention in San Francisco, California believes that the electric

industry should facilitate informed customer choice that will promote efficient markets, resource

diversity, and environmental quality; and be it further

RESOLVED that the NARUC supports initiatives leading to minimum, enforceable, uniform

standards for the form and content of disclosure and labeling that would allow retail and wholesale consumers easily to compare price, price variability, resource mix, and environmental characteristics of their electricity purchases; and be it further

RESOLVED that the NARUC urges states adopting retail direct access programs to include

enforceable standards of disclosure and labeling that would allow retail consumers easily to

compare the price, price variability, resource mix, and environmental characteristics of their electricity purchases.

APPENDIX B: UNIFORM CONSUMER DISCLOSURE STANDARDS FOR NEW ENGLAND (Pages 11-13) Price Disclosure for Bundled Products

How should the label deal with variable prices such as prices that vary with the spot market price?

Recommendation: The label should reflect the average price, based on the average electricity price during the last month of the most recent quarter. The label should indicate the basis of the displayed price.

Variable prices, including prices based on spot market prices will, by definition, be changing constantly. Consumers will receive the exact pricing terms in any service contract and in the required *Terms of Service*. The label will tell the consumer that the average prices displayed are variable (as opposed to fixed). Consumer familiarity with fixed versus variable rate loans and mortgages will make it easier for consumers to understand variable priced electricity.

To facilitate comparison shopping — particularly comparison shopping between products using variable pricing — and minimize gaming opportunities, we recommend that the average prices represent a snapshot on a particular day for all suppliers. The label should clearly indicate this fact and refer consumers to the *Terms of Service* for more information.

How can price be disclosed for bundled products ? For example, what if a firm offers electricity to customers who also receive Internet access or cable television service at a bundled rate?

Recommendation: Suppliers have the option to disclose price either by rolling the cost of all goods into the price of electricity or by disclosing the same electricity price for both the bundled and unbundled version of the product.

The issue of how to display average prices when electricity is bundled with other products is particularly difficult. It involves a careful balance between giving customers an understandable way to compare prices without discouraging product innovation though price displays that bias against bundled products.

It is difficult, if not impossible, to determine the stand-alone price of electricity where a supplier only offers it as part of a bundled product with a single price.[37]

It is not clear whether bundled products will be common. In the telecommunications market, for example, the move to competition has resulted in a fewer, not more bundled products as compared to the regulated market of 15 years ago.

Bundled products and services should not be confused with suppliers offering multiple products and services, which we believe that suppliers are likely to do. We also expect there will be discounts for buying multiple products from the same supplier. We have

seen deep discounts on software when bought as part of a larger package, discounts on insurance if the consumer has home and auto insurance with the same supplier, lower service charges if checking and savings accounts are with a single bank, and discounted prices if multiple telephone services such as Caller ID, Call Waiting and Call Forwarding are bought as a package. An electricity firm might sell either electricity or Internet access and offer a discount to customers who purchase both.

Where a supplier's **only** electricity offer is bundled with other services, there are three options.[38] Firms offering bundled products could be exempted from the requirement to report price. In this case, the price section of the label would indicate that electricity price information is not available separately. This option is not recommended because suppliers wishing to make price comparisons difficult could bundle electricity with some trivial product simply to avoid disclosing price in the label and, at the same time, could display price information in their marketing materials in a fashion that places their product at an advantage.

The second option is to require the supplier to allocate the total price between the bundled products and disclose the allocated price of electricity, with an added note that the price is available only if the consumer purchases specific other services or products shown in the *Terms of Service*. This option is better than the first. While there is a clear potential for gaming, the note on the label and the unbundled prices in the *Terms of Service* may be enough to discourage suppliers from showing artificially low electricity prices in the label.

The third option is to calculate an electricity price based on the total price paid for all bundled services, with an added note that other services are included in the price of electricity. We believe this option is better than the first and may be better than the second. This option should discourage suppliers from limiting their electricity offers to bundled products, a move which may be desirable, at least in the early years of retail electricity competition. On the other hand, under this option the label will be seen in conjunction with other marketing materials created by the supplier. This contrasts with natural gas price comparisons being experimented with by the Ohio PUC. In the Ohio price comparisons, the consumer is given a single page comparing the average prices of all suppliers. Any bundling of services or other complexities of price offers are necessarily limited in this type of disclosure.

We recommend that firms that offer electricity on **both** a bundled and unbundled basis (with or without a discount for buying multiple products), have the option of disclosing price in one of two ways. The supplier could elect to roll the costs of all goods into the disclosed average price of electricity as described in the third option above, or it could report the unbundled electricity price for both the bundled and unbundled version of the product.

How should one-time price inducements be reflected in price disclosure?

Recommendation: Price inducements should not be reflected in the disclosure of average electricity price.

A related issue is the treatment of one-time sales inducements. In New Hampshire, several firms used inducements such as bird feeders or cash to attract new customers. Focus groups in New Hampshire and elsewhere found that customers preferred price disclosure that ignored inducements. Given a clear electricity price, consumers seem to be able to recognize the one-time inducements.

Endnotes

1. See, e.g., Alexander, Barbara and NCLC, Consumer Protection Proposals for Retail Electric Competition: Model Legislation and Regulations, Regulatory Assistance Project, October, 1996.

2. Electricity is used throughout this report to refer to what regulatory insiders call generation services. Distribution is used to refer to transport and local delivery services.

3. National Consumer Law Center, Comments of Low Income Intervenors in Mass. DPU Docket 95-100 (August 12, 1996)

4. See Alan S. Levy et al, *Information Disclosure for Electricity Sales: Consumer Preferences From Focus Groups,* The National Council on Competition and the Electric Industry, July 1997

5. An upcoming National Council Report entitled "Label Testing: Results of Mall Intercept Study" summarizes the results of large-scale disclosure testing and provides quantitative evidence of the extent of consumer confusion caused by the lack of simple price comparison.

6. Id.

7. E.g., N.J. Admin. Rules §§13:45A-14.1 et seq.

8. New Hampshire PUC, Final Plan, Restructuring New Hampshire's Electric Utility Industry, DR 96-150, February 28, 1997, at 102-103.

9. The Home Equity Loan Consumer Protection Act of 1988 (Pub. L. No. 100-709, 102 Stat. 4725 (1988) requires that any home equity loan secured by a variable rate note must provide consumers with a 15-year historical table illustrating the rate changes based on an assumed $10,000 initial extension of credit, a statement of the frequency of the rate adjustments and other specific variable rate information. The law also imposed substantive limitations on the frequency of the changes in the interest rate or Apr and a

requirement that the index referenced for the variable rate changes must be outside the creditor's control and publicly available to the consumer.

10. This information should be derived from regional average load shapes.

11. The Maine, Pennsylvania, New Hampshire and California commissions, among other, have already determined that only distribution companies can threaten disconnection of service, but that this remedy is not available to suppliers or to distribution companies seeking to collect charges on behalf of suppliers. These same commissions, however, do allow the distribution company to use the disconnection tool for the collection of the standard offer or provider of last resort service.

12. e.g., Pennsylvania

13. e.g., California

14. The need for disclosure of the consequences of early termination has arisen in other consumer transactions as well. E.g., Consumer Leasing Act, 15 U.S.C. 1667 et seq., and Federal Reserve Board regulations, 12 C.F.R. 213 (auto lessor must conspicuously disclose early cancellation penalty); Iowa Code §321I.5(2)(m) (motor vehicle service contracts); 940 Mass. C.M.R. 3.13(2) (consumer fraud statute requires disclosure of cancellation policy); Idaho Admin. Code 04.02.01, subchp O, rules 150, 152 (layaway cancellation policy must be disclosed). Analogously, Truth In Lending requires disclosure of the cost of prepayment.

15. Even in the absence of specific rules, however, slamming is a violation of consumer fraud statutes. E.g., Zimmerman v. Bell Tel. Co. Of Penna., 551 A.2d 602 (Pa. Cmwlth. 1988) (inside wire).

16. Fair Credit Reporting Act, 15 U.S.C. §1681m, 1681b(3)(E); Equal Credit Opportunity Act, 15 U.S.C. 1691(d).

17. If there are any limits or disclaimers, the Uniform Commercial Code requires that they be conspicuously disclosed. E.g., Tribble Trucking Corp. V. General Motors Corp., 14 U.C.C. 63 (N.D. Ga. 1973). See Federal Trade Commission Used Car Rule, 16 C.F.R. 455.1(b), 455.2(b), 455.3(b) (detailed prescription of language, including sticker requirement); Federal Trade Commission Magnuson-Moss Act rules, 16 C.F.R. 701.3, 702.3(a), 703.1, 703.2 (consumer warranties must be conspicuously and comprehensively disclosed in simple language before the sale)

18. For example, optional services should be so identified with itemized price disclosures. Wis. Adm. Code PSC 165.043(4) (optional telephone services may not be provided without disclosure of price, optionality, and existence of alternative sources); Federal Trade Commission Funeral Industry Practices Rule, 16 C.F.R. 453.2-453.4 (optionality of certain services must be disclosed). Similarly, under consumer fraud

statutes, exclusions, reservations, limitations, or conditions of an offer must be disclosed. E.g., Utah Consumer Protection Regulation R152-2-2.

19. For example, warranty disclosure stickers must be affixed to used cars. See note 6, above. The Telephone Disclosure and Dispute Resolution Act, for another example, mandates a preamble of required pricing information and an opportunity to hang up without incurring charges before audio-text telephone charges (900 numbers) can be incurred. Truth In Lending (TIL) requires mass mailings and unsolicited phone calls regarding open end credit (credit cards) to clearly and conspicuously disclose interest rates (including variable rates and regular rate, if different), minimum finance charge, fees (certain fees may be omitted by telemarketers), balance computation method, and grace period. In the case of telemarketing, written disclosures must also be made at or before the delivery of the credit card. Federal Reserve Board, Reg. Z. On the other hand, TIL disclosures need only be made in advertising if any credit term is mentioned. In that event, the full disclosure requirement is triggered. Reg. Z, Commentary, 226.16.

20. The effort by the Truth in Lending Act to require certain interest rate disclosures as part of all consumer credit advertising has had mixed success.

21. California, Pennsylvania and Massachusetts require a three-day right of rescission for customers upon receipt of the mandated contract disclosures.

22. Examples of such requirements for clarity and coherence include Haw. Rev. Stat. §487A-1; Me. Rev. Stat. Ann. Tit.10 §1124; Minn. Stat. Ann. §325G.31; Mont. Code Ann. §§30-14-1101 et seq.; N.Y. Gen. Oblig. Law §5-702.

23. e.g., Food & Drug Administration, Nutrition Facts, 21 C.F.R. §101.9, 101.15; Federal Trade Commission Used Car Rule, 16 C.F.R. 455.2 (sticker); Federal Reserve Board, Reg. Z (optional model Truth In Lending forms).

24. Conn. Gen. Stat. §42-152(b).

25. Ore. Rev. Stat. §180.545.

26. 73 Pa. Stat. §2205.

27. Haw. Gen. Stat. §431:10-106. Accord, W. Va. Code §33-29-4. Rudolph Flesch devised this test after research into the reading level of typical Americans as well as the sentence complexity and length conditions that determine readability at different educational levels. This memorandum would probably not pass the Flesch test.

28. Conn. Gen. Stat. §42-152(c).

29. Calif. Lemon Law, Cal. Civ. Code §1793.23; F.T.C. Used Car Rule, 16 C.F.R. 455.2 (text, other requirements larger); N.J. Stat. Ann. §56:12-10; Haw. Rev. Stat. §§431:10-104 et seq. (insurance); W. Va. Code §§33-29-1 et seq. (insurance).

30. F.T.C. Used Car Rule, 16 C.F.R. 455.2 (black ink); Calif. Lemon Law, Cal. Civ. Code §1793.23 (black type on white); Conn. Gen. Stat. §42-152(b): 73 Pa. Stat. §2205.

31. 16 C.F.R. 308.2, 308.3 (pay-per-call).

32. In some states, statutory revisions may be necessary to create these enforcement tools. It will be particularly important for the commission to have authority to impose significant fines to complement its licensing authority.

33. In most states, however, violation of a regulation will be considered a violation of UDAP. Furthermore, while most state UDAP statutes exempt public utilities or other fully regulated industries, such as banking and insurance, the lack of price regulation of suppliers will probably bring this industry under the authority of the Attorney General and the UDAP.

34. With respect to the label the focus of this report has been on the price and contract provisions. The supply mix and air emission information are drawn from other National Council reports and are included here for the sake of completeness.

35. This information is available and should be divulged by the distribution company.

36. We recommend that suppliers be required to provide a notification of contract renewal or contract termination for at least two billing cycles.

37. These problems caused some stakeholders to recommend that PUCs require all suppliers offering bundled electricity to also offer it on an unbundled basis.

38. Based on experience in other markets, we do not expect there will be many circumstances in which sellers will offer electricity only if consumers buy a bundled product. Most sellers offering bundled services will also offer electricity on an unbundled basis.