



Friday
April 23, 1999

Part VI

Federal Trade Commission

Public Workshop: Market Power and
Consumer Protection Issues Involved
With Encouraging Competition in the U.S.
Electric Industry; Notice

FEDERAL TRADE COMMISSION**Public Workshop: Market Power and Consumer Protection Issues Involved With Encouraging Competition in the U.S. Electric Industry**

AGENCY: Federal Trade Commission.

ACTION: Notice announcing the dates of workshop.

SUMMARY: The Federal Trade Commission has set September 13–14, 1999 as the dates for its public workshop examining the market power and consumer protection issues involved with encouraging competition in the U.S. electric industry.

DATES: The workshop will be held September 13 and 14, 1999 in the Commission Meeting Room (Room 432), 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: For questions about the workshop, contact: Michael Wroblewski, Office of Policy Planning, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, telephone 202–326–2155, e-mail mwroblewski@ftc.gov; John C. Hilke, Bureau of Economics, Federal Trade Commission, 1961 Stout Street, Suite 1523, Denver, CO 80294–0101, telephone 303–844–3565, e-mail jhilke@ftc.gov; Gina Schaar Howard, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, telephone 202–326–2982, e-mail ghoward@ftc.gov; or David Balto, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, telephone 202–326–2881, e-mail dbalto@ftc.gov.

To preregister for the workshop, contact Wendy Givler, National Research Regulatory Institute at The Ohio State University, 1080 Carmack Road, Columbus, Ohio 43210, telephone (614) 292–9106, e-mail givler.4@osu.edu.

SUPPLEMENTARY INFORMATION:**Retail Electricity: Promise and Progress Workshop***Overview*

In recent years, states and the Federal government have taken steps to encourage restructuring and competition in the electricity industry, including the elimination of regulatory barriers. The FTC recognizes these issues are vast and interrelated and that states could derive substantial benefit from sharing ideas and experiences in these areas. The FTC seeks to convene a workshop that will allow such idea

sharing on two topics that bear directly on the FTC's expertise—market power (e.g. evaluating and addressing horizontal market power concerns in generation) and consumer protection (e.g. disclosures by electric service providers of environmental attributes of power they are selling). The intent of the workshop is to provide a forum for discussing the experience under policies that have been implemented at the state level, rather than attempting to provide all of the answers to a complex set of issues that vary by region and locale. The FTC anticipates that a robust exchange of views and ideas among those working on the issues will prove stimulating and useful as the regulatory reform process moves forward. To facilitate discussion of how states have addressed these two issues, each of the panels in the workshop will be moderated by the FTC (or the U.S. Department of Justice, Antitrust Division), so that we can gain a better understanding of the issues involved and be available as a resource. Although there are many other issues that policymakers are considering in the electric industry restructuring debate, discussion will focus on how states have addressed market power and consumer protection concerns.

Workshop Goals

1. Provide state regulators and state attorneys general a forum in which they can describe and discuss present and expected results of state regulatory reform efforts in the electric power industry with a focus on market power and consumer protection strategies to ensure that consumers benefit from regulatory reform.
2. Provide an opportunity for the Commission and the staff to gain a better understanding of the issues involved in the regulatory reform process so that we can serve as a resource with respect to market power and consumer protection issues.

Registration and Participants

The workshop will focus on issues of concern to state regulators and state attorneys general. State commissioners, attorneys general and their staffs from states active in promoting retail electricity competition will be invited to participate as panelists as described in the following proposed workshop agenda. Suppliers, customers, public policy and interest groups and/or representatives from academia that have experience with these state efforts also will be invited to participate as panelists. Other state commissioners, attorneys general and their staff are encouraged and welcome to attend.

Electricity industry groups, marketers, suppliers and customers are invited to attend as well.

The National Regulatory Research Institute (NRRI) and the National Council on Competition and the Electric Industry (NCCEI) are co-sponsoring the workshop. NRRI will handle registration. To ensure space, attendees are encouraged to preregister by September 3, 1999. To preregister, contact Wendy Givler, National Research Regulatory Institute at The Ohio State University, 1080 Carmack Road, Columbus, Ohio 43210, telephone (614) 292–9106, e-mail givler.4@osu.edu.

Proposed Workshop Agenda*First Day*

Introduction Address 9 a.m. (15 minutes)—Representatives of the sponsoring organizations (FTC, NRRI, and NCCEI) will provide an introduction by establishing the framework for the two-day workshop and providing an overview concerning the focus of the workshop on market power and consumer protection issues involved as states move toward retail electricity competition.

Session I: Retail Competition in Pioneer States

Panel A: What Approaches Did Pioneer States take in Promoting Retail Electricity Competition?

(9:15 a.m.–10:00 a.m.)

State policymakers (state commissioners or staff) from pioneer states (states active in promoting retail electricity competition) will be asked to discuss the approach and structure each state used or is using to proceed with electricity restructuring. In order to provide guidance and to share experiences with other states considering restructuring, each panelist will be asked to provide an assessment of the best and worst of his/her state's experience, as well as describe the most significant decisions made in restructuring the provision of electricity at the retail level. Examples of the types of issues panelists might raise include:

- The approach and process the state used to address regulatory reform and restructuring;
- Types of services (e.g., generation, metering & billing) subject to competition;
- Elimination of entry barriers (e.g., streamline of siting requirements);
- Effects on consumer choice of various competitive transition charges that have been implemented; and
- Consumer education efforts aimed at retail electricity competition.

Break (10:00 a.m.–10:15 a.m.)

Panel B: Assessment of the Results to Date of Pioneer State Reform Efforts

(10:15 a.m.–12:00 p.m.)

Panelists representing suppliers, customers, public policy and interest groups and/or academia will be asked to assess the positive and negative results of state retail electricity restructuring efforts, and the reasons therefor, with an emphasis on:

- Types of products and services that have been offered in the states where retail competition has been implemented;
- Percentage of industrial, commercial and residential customers switching to new service providers; and
- Electricity pricing trends for industrial, commercial and residential customers in a deregulated environment.

Lunch Break (12:00 p.m.–1:15 p.m.)

Session II: Existing Market Power in Retail Markets

Panel A: How Have States Addressed Existing Market Power?

(1:15 p.m.–2:15 p.m.)

Panelists (state attorneys general, commissioners or staff) will be asked to discuss how each state addressed existing market power of incumbent utilities, if any.

- Approaches states have taken with respect to evaluating and addressing concerns about horizontal market power (in the generation sector) of incumbent utilities (e.g., divestiture, ISOs).
- Approaches states have taken with respect to evaluating and addressing vertical discrimination and cross-subsidization (e.g., use of ISOs, divestiture, codes of conduct).

Break (2:15 p.m.–2:30 p.m.)

Panel B: Assessment of State Efforts to Address Existing Market Power

(2:30 p.m.–3:45 p.m.)

Panelists representing suppliers, customers, public policy and interest groups and/or academia will be asked to discuss the positive and negative results of state efforts to evaluate and address existing market power, if any, held by incumbent utilities. FTC staff also will assist in this discussion by presenting possible approaches to address and remedy market power by:

- Applying the factors in the DOJ/FTC Horizontal Merger Guidelines to assess existing market power (horizontal);

- Considering alternative future scenarios based upon different possible remedies;

- Providing access to the information necessary for an appropriate analysis;
- Using computer simulations to assess market power.

Break (3:45 p.m.–4:00 p.m.)

Session III: How Does Wholesale Competition for Generation Affect Retail Electricity Competition?

(4:00 p.m.–5:30 p.m.)

Panelists (federal policymakers, academics, or representatives from public policy groups) will be asked to discuss the links between wholesale competition and retail competition and whether competitive wholesale generation electricity markets are necessary for competition to emerge at the retail level. The topics will include:

- Consideration of regional transmission organizations;
- Use of new technologies (distributed generation) that facilitate entry;
- Congestion pricing through locational marginal pricing and the use of firm transmission rights;
- Role of North American Electric Reliability Council (NERC) and reliability monitoring; and
- Implications of the wholesale price spikes of the past year for prospective retail electricity competition.

Second Day

Session IV: Affiliate Rules or Codes of Conduct

Panel A: How Have States Developed Affiliate Rules or Codes of Conduct?

(9:00 a.m.–10:00 a.m.)

Panelists (state attorneys general, commissioners or staff) will be asked to discuss how each state has used affiliate rules or codes of conduct to remedy problems posed by incumbent utilities' market power and to prevent deceptive practices. Topics of discussion will include:

- Types of affiliate entities created by utilities for unregulated activities;
 - The potential for cross-subsidization between a utility and its affiliates, including controls to avoid cross-subsidization;
 - Unregulated affiliates' use of incumbent utilities' names/logos—varieties of use and possibility for consumer confusion; and
 - Remedies to avoid consumer deception regarding the relationship between the incumbent utility and the affiliate—disclosures regarding the relationship versus a ban on use of the utility name and logo by the affiliate.

Break (10:00 a.m.–10:15 a.m.)

Panel B: Assessment of State Use of Affiliate Rules or Codes of Conduct

(10:15 a.m.–12:00 p.m.)

Panelists representing suppliers, customers, public policy and interest groups and/or academia will be asked to assess the positive and negative results of state use of affiliate rules or codes of conduct with an emphasis on:

- Effect (enhancement vs. inhibition) on competition;
- Consumer expectations and reactions; and
- Relationship between these rules and the offering and pricing of new/innovative products.

Lunch Break (12:00 p.m.–1:30 p.m.)

Session V: Advertising and disclosures of Environmental Attributes and Price

(1:30 p.m.–3:00 p.m.)

Panelists (state attorneys general, commissioners, public policy and interest groups, or industry consultants) will be asked to discuss the trends in advertising environmental claims, labeling requirements, and tracking systems. FTC staff would lead off with a summary of its Green Guide comment to the National Association of Attorneys General (NAAG).

- Description of existing remedies for deceptive claims—jurisdiction (i.e., attorneys general, state commissions, or both); whether these remedies are sufficient or whether new legal authority is needed; need for additional industry guidance from regulators (e.g., Electricity Green Guides).

- Mandated disclosure of information—current requirements; effect on consumers and the market; relationship to advertising.
 - Verification or auditing of company-supplied information—state experience thus far.
 - Issues with systems for tracking fuel mix—cost; prevention of “double counting” of a fuel source; substantiation that a product has not been “double counted”; the Western states' current views and plans on using a “tradable tags” system.

Break (3:00 p.m.–3:15 p.m.)

Session VI: Supplier Practices in a Retail Environment

(3:15 p.m.–4:45 p.m.)

Panelists (state attorneys general, commissioners, public policy and interest groups, or industry consultants) will be asked to discuss existing legislation/regulations on slamming/cramming issues, licensing/bonding of

service providers and credit and billing practices of service providers.

- Slamming and cramming—extent of problem; adequacy of existing remedies; preventing fraud without creating unnecessary barriers to entry or legitimate innovative marketing techniques.

- Licensing and bonding—deterring unscrupulous competitors without

discouraging legitimate new entrants; protecting incumbent utilities vs. protecting consumers.

- Credit laws and regulations—applicability of Truth in Lending Act (TILA), Equal Credit Opportunity Act (ECOA), etc. to suppliers and utilities under various billing schemes; consumer privacy concerns arising from exchange of account information for

switching or billing purposes; account information access and sharing between utilities and suppliers.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

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