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WORK GROUP ON
ELECTRIC INDUSTRY
RESTRUCTURING

Final Report
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EXECUTIVE SUMMARY

This report presents a summary of the issues and discussions of the Work Group on Electric Industry Restructuring. The Work Group was created by Resolves of 1995, chapter 48 (Appendix A), as the first phase of a two phase study of electric industry restructuring in Maine. The Work Group met 9 times during the interim between the First and Second Regular Sessions of the 117th Legislature. A list of Work Group members is attached as Appendix B.

Resolves of 1995, chapter 48, gave the Work Group a broad charge to study the issues raised by deregulation of the electric utility industry and to begin the process of planning the transition of the electric industry in the State from a regulated monopoly to a competitive market.

Throughout the group's discussions there has been a tension between the desire to create a "free market" for sales of electric energy and the desire to establish regulatory parameters to protect or promote certain interests. Those interests include protecting utility shareholders from stranded costs, protecting the integrity of existing contractual arrangements, promoting the ability of new players effectively to compete in the new marketplace, protecting customers from market abuse or neglect, protecting and promoting environmental quality. Although these issues were not resolved in this phase of the process, the Work Group was able to make a significant first step by identifying both the functional components that will most likely emerge in a competitive electricity market and how and where among those functional components a variety of functions that various group members believe need to be provided might be provided. That analysis is summarized in this report in Chart A, entitled "Restructuring; Issues and Options," and is discussed more fully in section 2.

The Work Group engaged in substantive and lengthy discussions on stranded cost recovery, an issue that many in the group felt was the most import transition issue associated with restructuring. Although the group did not reach consensus as to how (or even whether) full recovery of stranded costs should be addressed, the concepts, concems and suggestions of the members of the Group are summarized in this report in Chart B, entitled "Stranded Investment."

The Work Group attempted to focus primarily on those topics that are likely to fall within Maine's jurisdiction. However, the report emphasizes that resolution of issues not within the state's jurisdiction is a prerequisite to effective restructuring of the industry. The fact that Maine is not able to resolve those issues on its own does not in any way suggest that Maine can ignore those issues.

Another issue central to restructuring is whether the functional sectors of a competitive electric market need to be separate legal entities or whether so-called

functional unbundling is sufficient. Underlying the issue is a fundamental concern of electric utilities that actual unbundling or mandated divestiture could result in irreparable financial damage to them, loss of benefits of low-cost hydroelectric and nuclear power to Maine consumers and loss of the economies of vertical integration. Others believe that continued vertical integration could provide unfair market advantage to utilities and that the benefits of increased competition could outweigh such losses, if any.

Various proposals for restructuring were offered by members of the group in the course of the group's work. Those proposals are summarized in Chart C, entitled "Restructuring Plans."

A subgroup of the Work Group developed on its own a more detailed proposal which was discussed at the Work Group's penultimate meeting. That proposal ("Paradigm" proposal) is attached as Appendix D. Many members of the group provided written comments on that proposal; these are attached as Appendix E. At the final meeting of the Work Group, two alternative proposals were offered ("Alternative Proposal #1" and "Alternative Proposal #2"). These are attached as Appendix F and Appendix G.

At the final meeting, the group voted on Alternative Proposal #1 and Alternative Proposal #2. Alternative Proposal #1 (see Appendix F) was supported by eight members of the Work Group. Alternative Proposal #2 (see Appendix G) was supported by four members of the Work Group. Copies of the voting sheets are included with the two alternative proposals in the respective appendices.

1. Background

A. The old days; pre-PURPA

The electric industry was born in 1882 with the opening of a central electric power station in New York City. During its infancy, the industry grew, but electric utilities remained small, discrete, local. They were regulated by local governments. Early in this century, utilities systems were expanding beyond municipal boundaries and state utility commissions were created and assumed the primary regulatory role. Systems continued to expand, growing into interstate grids. In 1920 the Federal Power Commission was created; in the 1977, the FPC was reorganized into the Federal Energy Regulatory Commission or "FERC." FERC regulates the interstate transmission of electricity and wholesale electric transactions.

By the 1930s, electric utilities had grown very large; some companies controlled vast, geographically far-flung electric empires. These companies were impossible for individual state PUCs adequately to regulate; they were not adequately regulated at the federal level; the result was concern about fraud and mismanagement. In response, Congress enacted the Public Utility Holding Company Act of 1935 ("PUHCA"). PUHCA was designed to eliminate these large companies by restricting holding company activities to limited geographic regions.[1] The provisions of the PUHCA are implemented by the federal Securities and Exchange Commission.

From their inception, electric utilities have been regulated as monopolies under the theory they are "natural monopolies," that their product and services can most economically be produced and provided by a monopoly.[2] A fundamental

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[1] The PUHCA created a new regulated entity called a registered holding company ("RHC"). A RHC is a holding company that does not qualify for an exemption from registration. A holding company is any company which owns at least 10% of the shares of or (under certain circumstances) which exercises a controlling influence over a public utility. A holding company is an exempt holding company if it meets any one of several conditions; in terms of Maine's utilities, the most significant exemption is a holding company "whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto." (15 USC sect. 79c(2)). A holding company which fails to fall into an exemption must register with the SEC. A RHC is subject to a wide array of burdensome and intrusive SEC regulation.

None of Maine's retail electric utilities is a RHC; each Maine utility which qualifies as a holding company also qualifies for an exemption. Maine Yankee Atomic Power Company is partially owned by a subsidiary of several utilities owned by Northeast Utilities, a RHC. Northeast Utilities is also the parent company of Public Service of New Hampshire.

[2] We note that the history of electric utilities is far more interesting than this statement might suggest. For instance, Bangor Hydro-electric Company started as a transportation company developing hydro-electric generation facilities at Veazie for the then revolutionary purpose of transmitting the power 5 miles

assumption of restructuring is that a free market could provide greater efficiencies in some or all sectors of the electric industry.

As a monopoly, an electric utility is granted by law the exclusive authority to provide electric service in its franchise territory. It is also, by law, given the exclusive obligation to serve customers in that territory.

Historically, while no law required utilities to build their own generation units or forbid utilities from purchasing power from nonutility generators, the regulatory structure, established to regulate a natural monopoly, tended to provide no incentive for larger, investor-owned utilities to pursue outside generation resources.[3] This changed during the oil crises of the 1970s and the passage of the federal Public Utility Regulatory Policies Act of 1978 or "PURPA".

B. PURPA and competitive generation

PURPA had as its primary goal the reduction of US energy dependence on foreign oil. PURPA encouraged state commissions to pursue cost-based rate making (so that utility customers would get price signals which would reflect their use of energy and thus encourage their efficient use of energy) and encouraged utilities to pursue demand-side management (methods by which utilities could promote efficient energy use by customers).

PURPA also encouraged the development of efficient electricity generation and renewable and indigenous resources by requiring utilities to purchase power at avoided cost from certain non-utility generators (NUGs).[4] NUGs who meet PURPA qualifications are referred to as "qualifying facilities" or "QFs" and are of two types: the cogenerator (a facility that achieves efficiency by producing both electric energy and useful thermal energy) and the small power producer (a small facility that uses one or more specified non-fossil fuel sources as the primary or sole energy input). Under FERC rules implementing PURPA, a qualifying facility can require that the utility sign a long-term contract for power produced by the facility with the rate set up to the projected avoided costs over the term of the contract.

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or so to power the street car system in Bangor. The idea of a broader use of electricity came later and regulation as a monopoly came later yet.

[3] We note that smaller, consumer-owned utilities did have incentives to purchase power and did in fact purchase power, absent PURPA directives.

[4] "Avoided cost" is a term of art which refers to the cost the utility avoids by not having to acquire the power or equivalent conservation from elsewhere (e.g. building plant or buying the power from another source).

In response to PURPA, Maine enacted the Electric Rate Reform Act and the Small Power Production Act.[5] The Electric Rate Reform Act requires electric utilities to develop rate design proposals for implementing energy conservation techniques and innovations. The Small Power Production Act essentially follows federal law on qualifying facilities.[6] In 1988, the Maine Legislature enacted the Energy Policy Act which specifically requires utilities to pursue least-cost planning.[7] The goals of these laws are to achieve cost-based rate making, to promote energy efficiency, conservation and the use of indigenous resources, to reduce dependence on fossil fuels and to encourage diversification of energy supply.

Energy efficiency has been enhanced, renewables and indigenous resources now constitute a significant portion of Maine's energy mix and fossil fuel use has been vastly reduced. Not all members of the group, however, agree that federal and state law were the primary impetus for energy efficiency improvements. It has been suggested by some in the group that the increase in efficiency was primarily the result of economic forces associated with increased electricfication in society. Others in the Work Group disagree with this assessment.

Perhaps the most important effect of these laws in terms of industry restructuring was the introduction of competition into the electric generation market: Utilities began to purchase power from NUGs. Indeed, today in Maine, approximately 32% of Maine's electric energy is generated by NUGs. This result is consistent with the goals of PURPA and Maine law. There are a variety of ancillary benefits that have accrued, including the economic effects of the creation and expansion of the NUG industry in Maine. There is not a consensus, however, that the benefits associated with the NUGs outweigh the costs associated with the NUGs.

There has been considerable controversy about the NUG contracts. At the root of the controversy is the fact that the rates set for contracts signed in the 1980s were based on projections of utility avoided costs (which were themselves based largely on projections of the rate of increase in oil prices) which have proven to be very much in error. In addition, there is controversy about the reason these contracts were executed. The average cost of power in the market today is less than what the utilities are paying, on average, under their NUG contracts. Utilities identify these costs as a significant portion of the costs which restructuring could potentially "strand". Some contend that utilities would have been worse off had they pursued the options they "avoided" at the time they signed those contracts. Others disagree. This group was not charged with evaluating the wisdom of these historical choices and has not made such an evaluation.

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[5] 35A MRSA c. 31, sub-c. III and c. 33, respectively.

[6] It should be noted that PURPA's QF provisions are mandatory. Even in the absence of Maine law, utilities would still be bound by the obligations imposed by PURPA.

[7] 35A MRSA c. 31, sub-c. VI

C. Movement Towards Restructuring; Stop-gap Measures

When utility rates are relatively high compared with other options available in the market there is an incentive for customers to explore other options for meeting their energy needs. Even under a monopoly structure, options do exist (though, for a variety of reasons, some customers may have more options than others), including fuel switching (e.g. from electricity to natural gas or oil or wood), moving from one utility service territory to another (particularly a move out of the state or the region) self-generation (installing a generator to supply one's needs) and reducing energy use through load shifting or efficiency improvements. In recent years, certain customers, most particularly customers with large energy needs, have sought, in addition, fundamental changes in the industry structure in order to make available a broader range of options.

These forces have not been without effect on utilities. Lost customers (whether from customers leaving the service territory, switching fuels or self-generating) translates into lost revenues. Certain utility costs, incurred to serve projected energy demands of customers, do not follow a customer off the system; when a customer leaves the system, those costs are generally spread over fewer sales.[8] The result: upward pressure on rates. This exacerbates the situation by encouraging other customers to leave the system, leaving the utility to spread costs among still fewer customers. Obviously, this trend tends to create an unstable situation which can have further ramifications, including potential injury to the utility's credit rating; if the rating is downgraded, the utility's cost of capital increases, placing further upward pressure on rates.

In the early 1990s, the legislature responded to what it believed to be the beginning of such a trend by passing several laws permitting utilities to market their surplus power by offering discount or incentive rates.[9] The rational for these laws was that by allowing a utility to sell surplus power at discount, it would have a better chance of keeping customers who might otherwise leave the system. Retention of customers benefits all customers to the extent that it allows the utility's costs to be spread over more sales and thus avoids further across-the-board rate increases.

D. Energy Policy Act of 1992

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[8] This description assumes that the utility seeks to spread, and regulators permit spreading, those costs over the remaining customers. There are other ways, of course, for the costs to be recovered, including from shareholders, departing customers and so forth.

[9] 35A MRSA sections 3154 (8), 3195 (6) and 4401-4404.

Although perhaps not as significant as PURPA in spawning competition in the electric industry, the passage by Congress of the Energy Policy Act of 1992 ("EPACT") unleashed new competitive forces in the electric industry and set in motion forces which are now reverberating throughout the electric industry. Perhaps the most significant provisions of the EPACT are those which create new legal entities called exempt wholesale generators ("EWGs") and those which relate to wholesale power transactions.

An EWG is an entity exclusively in the business of owning or operating a generation facility the power of which is exclusively sold at wholesale. EWGs are exempt from the burdensome provisions of PUHCA.[10] It is not yet clear what the significance of EWGs will be in the increasingly competitive electric marketplace; the primary Congressional purpose for the creation of EWGs was to promote and facilitate greater competition in electric generation. EWGs may well permit electric utilities and others to more freely compete in the generation business.

The EPACT provisions on transmission relate to wholesale wheeling. Wholesale wheeling involves hiring utility transmission lines to transmit power from a generator to a reseller. An example of wholesale wheeling may be found in the relationship of Madison Electric Works ("MEW") (a consumer-owned electric utility), Central Maine Power Company ("CMP") and Northeast Utilities ("NU"). MEW has a contract to buy power from NU. CMP transmits or "wheels" the power from NU to MEW which MEW then sells to its customers.

Under EPACT, the FERC has been granted clear authority to order wholesale wheeling and to set the wheeling rate. The result: Competition is very much a reality at the wholesale level. Those who purchase electricity for resale can now shop around for power.[11]

EPACT, however, does not reach to the retail level; the issue of whether and how much retail competition is appropriate has, so far, been left to the states.

E. Retail Competition; States Begin The Examination

Retail competition generally refers to a restructuring of the industry to allow retail customers to choose their electric energy supplier. Currently, with a very few exceptions, the only entity which can sell electric power to end-use customers in any

[10] "PUHCA" is the acronym for the federal Public Utility Holding Company Act of 1935.

[11] FERC has issued a proposed rule (generally referred to as the "Mega-NOPR") pursuant to EPACT which would, *inter alia*, require utilities to provide open access to their transmission lines to wholesalers of electric energy under tariffs whose terms and conditions are comparable to the those under which the utilities provide transmission for themselves.

particular geographic territory is a monopoly electric utility (be it consumer or investor owned) which is franchised to serve that territory. Conversely, the only entity from whom those end-users can purchase power is the monopoly electric utility.

In the last several years, states have begun to consider the options for restructuring the electric industry in order to permit some form of retail competition. Currently studies of electric restructuring are underway in many states (e.g. a task force on restructuring in Connecticut, a DPUC investigation in Massachusetts, a restructuring committee in New Hampshire). Principles to guide restructuring have been developed and agreed to by certain interest groups in Rhode Island and Massachusetts. Proposals for restructuring have been developed by various entities around the country (e.g. the California Public Utilities Commission, the staff of the New York Commission, the NEES companies, Niagara Mohawk Power Company). Michigan and New Hampshire are pursuing small retail wheeling pilot programs. Academics (e.g. the Harvard Electricity Policy Group) are busily studying the forces behind restructuring and the potential effects of restructuring.

However, while some states may be poised to begin some sort of restructuring of the electric industry, none has yet restructured its industry.

F. Maine: Prelude To A Study

In the early 1990s, bills came before the Maine Legislature designed to address the problems associated with utility surplus power, high rates and the threat of customers leaving the system. A bill was enacted permitting utilities to offer their surplus power at discounted rates.[12] In 1994, the Legislature approved a law allowing the Public Utilities Commission to approve electric utility flexible pricing plans;[13] the commission, in turn, has approved flexible pricing plans for all three of Maine's investor-owned electric utilities.[14]

The commission also approved a five-year price cap for Central Maine Power Company ("CMP")[15] and recently approved a 49-month price cap for Maine Public Service Company ("MPS").[16] While Bangor Hydro-electric Company ("BHE") has indicated a desire not to seek rate increases in the near future, the proceedings at the commission regarding a price cap are not yet finalized.[17]

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[12] 35A MRSA section 3154(8).
[13] 35A MRSA section 3195(6)
[14] BHE: Docket 94-125 (order, Feb. 14, 1995); CMP: Docket 92-345(II) (order, Jan. 10, 1995); MPS: 95-052 (order, Nov. 30, 1995).
[15] Docket 92-345(II) (order, Jan. 10, 1995).
[16] Docket 95-052 (order, Nov. 30, 1995).
[17] See Docket 94-125 (order, Feb. 14, 1995).

Beginning in 1993, legislation began to appear proposing a fundamental restructuring of the electric industry. In the First Regular Session of the 116th Legislature, legislation was introduced proposing a form of retail wheeling.[18] Another bill proposed to deregulate consumer-owned electric utilities.[19] In the Second Regular Session of the 116th, legislation was introduced proposing to establish a process at the Public Utilities Commission to cause the unbundling of utility generation from other utility services and assets.[20]

Issues specifically related to the NUG contracts have accompanied and in many ways become inextricably intertwined with issues raised by restructuring. NUG costs have been identified by Maine's three investor-owned electric utilities (CMP, BHE and MPS) as a significant portion of their costs which might be "stranded" by restructuring. Over the last several years, several bills have been introduced related to the NUG contracts. Legislation was passed in 1994 (and expanded this year) to permit the Finance Authority of Maine to issue bonds backed by the moral obligation of the State to assist utilities in buying down or buying out NUG contracts.[21] Pursuant to this program, Central Maine Power Company bought out one NUG contract and purchased the associated facility and Bangor Hydro-electric Company bought out two NUG contracts. Other renegotiations have occurred without FAME financing.

In the First Regular Session of the 117th Legislature, restructuring became perhaps the single most discussed issue before the Utilities and Energy Committee of the Maine Legislature. There were more than a half-dozen bills considered relating more or less to electric industry restructuring (see Appendix H), ranging from a proposal to establish a limited form of retail wheeling to a proposal to require the PUC to conduct an investigation of restructuring .

In response to these various legislative proposals, the committee established the Ad Hoc Committee on Restructuring to develop a consensus on a means of dealing with the issues raised by restructuring. The Ad Hoc Committee, composed of a subcommittee of the Utilities and Energy Committee and a number of interested persons, produced the legislation which became Chapter 48 of the Resolves of 1995-- the law establishing this study (see Appendix A).

2. Discussion of Issues

[18] 116th Leg., 1st Reg. Sess., L.D. 1482. Bill was not enacted.
[19] 116th Leg., 1st Reg. Sess., L.D. 1119. Bill was not enacted.
[20] 116th Leg., 2nd Reg. Sess., L.D. 1874. Bill was not enacted.
[21] 1993 Laws of Maine, c. 712; 1995 Laws of Maine, c. 120.

Myriad are the issues raised by restructuring an industry as complex and as fundamental to the workings of modern society as the electric industry. They are not limited to issues which one state can address; the electric system and the purchase and sale of electricity does not end at Maine's borders. Interstate transactions are currently and will continue to be under the jurisdiction of the federal government.

We have attempted to focus primarily on those topics which are likely to fall within Maine's jurisdiction. However, we emphasize that resolution of issues not within the state's jurisdiction is a prerequisite to effective restructuring of the industry; the fact that Maine cannot resolve these issues on its own does not in any way suggest that Maine can ignore the issues. We identify and discuss several which are of fundamental importance.

Throughout the group's discussions there has been a tension between the desire to create a "free market" for sales of electric energy and the desire to establish regulatory parameters to protect or promote certain interests (e.g. protecting utility shareholders from stranded costs, protecting the integrity of existing contractual arrangements, promoting the ability of new players effectively to compete in the new marketplace, protecting customers from market abuse or neglect, protecting and promoting environmental quality).

We have not resolved this tension. We have identified a series of potential interfaces between a series of functions (which some feel need to be provided in--though not necessarily by--a restructured market) and a list of what we think are likely to be the primary functional sectors within a restructured electric industry. We have identified certain functions which might be addressed through mechanisms external to a restructured electric industry (e.g. through programs supported by the state General Fund). Chart A outlines the various interfaces we have identified and the issues we have discussed. A more detailed discussion follows.

A. Functional or actual unbundling.

We have identified 7 basic functional sectors of a competitive electric market:

Generators: the owners and operators of electric generation facilities;

Marketers: persons or businesses which market electric power (both wholesale and retail);

System operator: an entity which operates the transmission grid;

Transmission system owner: an entity which owns a transmission system;

Distribution system owner: an entity which owns a distribution system;

Load Aggregators: entities which serve to aggregate individual consumers into groups for the purpose of buying electric power; and

Customers: retail end-users of electric energy.

CHART "A" RETRUCTURING; ISSUES AND OPTIONS

FUNCTIONAL OR COST RESPONSIBILITY (customer interest at stake)									
FUNCTION	**GENCO**	**MARKETERS**	**ISO**	**TRANSCO**	**DISCO**	**LOAD AGG.**	**CUSTOMERS**	**OTHER FUEL**	**TAXPAYERS**
ECONOMIC DISPATCH See System Reliability and Energy Planning	FERC-regulated regional issue ?		Role of NEPOOL?				System reliability Least-cost power dispatch		
OBLIGATION TO CONNECT					Obligation?	Some default obligation?	Access to power lines		
OBLIGATION TO SUPPLY ENERGY AS DEFAULT	Some obligation, perhaps	Some obligation, perhaps			Some obligation, perhaps. Role of a pool?	Some obligation, perhaps	Some "insurance" protecting those who cannot or do not want to shop for power; need to distinguish customer type?		
PRICE AVERAGING/CONTROL	Must provide "standard offer"? Let market discipline price?	Must provide "standard offer"? Let market discipline price?			Must provide "standard offer"? Let market discipline price?	Must provide "standard offer"? Let market discipline price?	Must provide "standard offer"? Let market discipline price?		
ANTI-COMPETITIVE PROTECTIONS	Divestiture? New rules? FERC issue?		Utl control of NEPOOL? ISO need anti-trust exemption?	FERC-NOPR "Comparability"	Unbundling?		Market pricing vs. Oligopoly pricing		Funding for enforcing consumer and anti-trust protections

CHART "A" RETRUCTURING; ISSUES AND OPTIONS

FUNCTIONAL OR COST RESPONSIBILITY (customer interest at stake)									
FUNCTION	**GENCO**	**MARKETERS**	**ISO**	**TRANSCO**	**DISCO**	**LOAD AGG.**	**CUSTOMERS**	**OTHER FUEL**	**TAXPAYERS**
SYSTEM RELIABILITY	Leave to market?		Responsibility for dispatch of generation?	Responsibility for day-to-day reliability of trans. system	Responsibility for day-to-day reliability of dist. system		Reliable power		
CONSTRUCTION, OPERATION, MAINTENANCE OF T&D SYSTEM				Responsibility for day-to-day reliability of trans. system; who has emin. dom.?	Responsibility for day-to-day reliability of dist. system; who has emin. dom.?				
TRANSMISSION AND ENERGY PLANNING See also DSM and System Reliability	Leave to market? Distributed generation? Need excess capacity in system?		Need to clarify ISO/transco. relationship/control	Repeal PUC trans. cert. process? Role of trans.-specific DSM? Address diff. trans. needs with diff. processes?	Role of distribution-specific DSM?		TOU pricing Customer choice Interruptible load pricing		
PROMOTING RENEWABLES	Leave to market? Allow aggregation of small gencos?	Green marketing?			Wires charge to fund R&D of renewable technologies?				Tax to pay for R&D of renewable technologies?
ENERGY SUPPLY PLANNING (diversity of supply; indigenous resources)	Leave to market?					Reliabilty Promotion of indigenous resources			

CHART "A" RETRUCTURING; ISSUES AND OPTIONS

FUNCTIONAL OR COST RESPONSIBILITY (customer interest at stake)									
FUNCTION	**GENCO**	**MARKETERS**	**ISO**	**TRANSCO**	**DISCO**	**LOAD AGG.**	**CUSTOMERS**	**OTHER FUEL**	**TAXPAYERS**
OLD SOURCE REVIEW	Regional issue. Old plant meet new plant standards? Cost borne by genco (not SC issue)?								
DSM	Genco required to offer customer DSM financing (shared savings arrangement)?	Marketing DSM?		Market provide incentives to use DSM to meet transmission needs?	Mandate DSM? Wires charge? Avoid cross-subsidies?	Market provide incentive to use DSM to meet customer needs?	Avoid incentives for inefficient energy use?	All-fuel tax to pay for DSM?	General tax to pay for DSM?
LOW-INCOME PROTECTIONS	Mechanism to handle welfare payments?				Wires charge? Separately identified on bill?		Winter disconnect Special rates	All-fuel tax to pay for energy assistance?	General tax? Let it default to property tax?
STRANDED COST RECOVERY	NUG contract renegotiations?				Wires charge? exit fee? entrance fee? Backup or standby fee?		Departing customer? All customers? returning customers?.....		General tax?
CUSTOMER REDRESS; BILLING	Mechanisms to handle customer complaints; mechanisms to permit disconnect?		Certification of sellers? Require genco take some risk of nonpayment?		Regulation of disputes about flow-thru charges? Managing disconnect? Provider of last resort?		Understandable billing; separation of billed services? Choice of genco; disconnect protections		Funding of Attorney General to handle consumer protection?

CHART "A" RETRUCTURING; ISSUES AND OPTIONS

FUNCTIONAL OR COST RESPONSIBILITY (customer interest at stake)									
FUNCTION	GENCO	MARKETERS	ISO	TRANSCO	DISCO	LOAD AGG.	CUSTOMERS	OTHER FUEL	TAXPAYERS
METERING	Need real-time metering for market to work?						Affordable access to real time metering-- Who needs?		
RETAIL MARKETING					Separate for regulatory purposes marketing functions from other disco functions?				

An issue immediately raised by such a list is whether these are necessarily separate legal entities or whether so-called functional unbundling under common ownership is sufficient. For instance, would a distribution system owner be prohibited from owning generation assets? Instead of divestiture, would regulation to ensure fair dealing be sufficient? Resolution of this issue is central to restructuring and has major anti-trust and consumer protection implications.

Underlying the issue is a fundamental concern of electric utilities that actual unbundling or mandated divestiture could result in irreparable financial damage to them, loss of benefits of low-cost hydroelectric and nuclear power to Maine consumers and loss of the economies of vertical integration. Other members believe that continued vertical integration could provide unfair market advantage to utilities and that the benefits of increased competition could outweigh such losses, if any.[22]

B. Economic dispatch.

Effective dispatch of generation will continue to be required to ensure adequate energy is flowing through the regional grid to meet customer needs. This is a regional issue; the restructured market cannot effectively work within the limits and control of one state. The dispatch of energy generated throughout New England (and, very likely, beyond) through the New England transmission grid will need to be handled by some regional entity or coordinated group which will in all likelihood be regulated by FERC.[23]

The term "economic dispatch" refers to a regime which ensures that energy is dispatched in an order related to the cost of the energy or, in a competitive market, the bid price (i.e. relatively low-cost resources dispatched before relatively high-cost resources). There is a tension between the central-planning (or, at least, organized cooperation) fundamental to the concept of economic dispatch and the ideals of a competitive generation market.

It has been proposed by some members that coordinated dispatch should be handled by an independent system operator ("ISO"): an entity specifically created for the purpose and structurally separated from other functional sectors of the competitive industry. It has been proposed by some members that the New England

[22] In a presentation to the Work Group, Deputy Attorney General Steven Wessler suggested that current anti-trust law may not address certain market advantage issues which could exist under vertical integration. He suggested that if restructuring creates or leaves in place an "uncompetitive" structure, anti-trust law may not provide a mechanism to cause the industry to become competitive.

[23] We note that discussions have been occurring on a regional basis about the creation of a so-called regional transmission group or "RTG" to address certain issues (particularly pricing issues) related to the competitive wholesale electric market in the wake of EPACT and the FERC "mega-NOPR".

Power Pool ("NEPOOL") continue to play this role of coordinated dispatch, analogous to the air traffic control function in the aviation industry.

These are issues which can only effectively be addressed on a regional basis.

C. Obligation to connect/obligation to serve

The prospect of a competitive retail electric market raises the issue whether persons who cannot or do not wish to shop for power will nevertheless be assured access to the electric system. Currently, an electric utility has certain legal obligations to serve customers within its territory. Connection to the utility system results in access to electric power.

Is it possible that generators, marketers, distribution companies or load aggregators might neglect or not wish to serve or connect certain customers (e.g. remote and low-load customers or customers with financial difficulties, etc.)? If the answer to this question is yes (as some in this group believe) and it is deemed appropriate to provide some protection to these customers (as some in this group believe), one option would be to assign to some entity, perhaps the distribution system owner, a legal responsibility to be a provider of last resort, i.e. to connect and to serve these customers.

The issue is intimately related to the following issue.

D. Price averaging/price control

Currently, electric utility rates are differentiated according to certain customer classifications; within each classification (with some exceptions under current flexible rate plans) rates are the same. Thus, a rural residential customer pays the same rate as an urban residential customer, even though the costs of serving the rural customer may be higher than the costs of serving the urban customer.

In a restructured market, the issue arises whether there will be a need to provide some "insurance" protection to customers who do not wish to or cannot effectively shop for power or to customers whose competitive choices may be limited due to location or other factors. Some in this group believe that the market will discipline prices and that a reasonable market price will be available to all customers. Others believe some protection would be necessary during any transition to a competitive market and perhaps for the indefinite future. One means of providing the protection would be to require some "standard offer" to be offered through one or more of the functional sectors of the industry.

If some such protection were established, other issues would arise such as how the standard offer price would be set, who would be responsible for ensuring the requisite power entered the system, how nonpayment by the customer would be handled and how any system cost not covered through the standard offer charge would be recovered.

Some in the group have suggested there should be a distinction made between customers who choose not to shop for power and those who cannot afford the options available on the market. The theory guiding this position is that regulatory interference with the "free market" should be kept to an absolute minimum. Others have suggested that a standard offer should be available to anyone who wishes to take it and that those who are able to secure lower-cost power on the market will do so. It has also been suggested that the standard offer for customers unwilling or unable to shop for power could be extended to customers with credit difficulties.

Some members have argued that a standard offer should not be the means to address issues related to low-income customers, that there is both a need for a low-income protections and a need to ensure the availability of a standard offer. Fundamental to this argument is the theory that restructuring should not leave any customer worse off than the customer is under the current system. Proponents of this theory suggest that Maine should endorse the goal of preventing, as much as possible, the loss from the electric grid of customers who can no longer afford electricity.

We note again these issues are intimately related to the previous issue (see subsection C).

E. Anti-competitive protections.

The move from a monopoly structure to a competitive market raises concerns about the market power which electric utilities may carry into the new marketplace. There are essentially two questions that arise: What, if anything, needs to be done during restructuring to protect against anti-competitive forces in the new market? What, if any, regulatory mechanisms are needed after the transition to police anti-competitive activities?[24]

Some have suggested that legal divestiture of the vertically integrated utilities is required to remove anti-competitive market power and prevent self-dealing by utility subsidiaries. Others have suggested that new rules may need to be created to police anti-competitive behavior in the new marketplace.

[24] See footnote 22.

We note that the FERC Mega-NOPR has introduced the notion of "comparability" in the context of transmission system access; this may be one method of ensuring utilities are shorn of unfair residual market advantages derived from their current monopoly status. If an ISO is created to operate the transmission system, presumably the goal of comparability will, *ipso facto*, be achieved. There may be a need to create some anti-trust exemption for the ISO similar to the exemption now enjoyed by NEPOOL. Other mechanisms or structures may need to be established in the other functional sectors of the market (particularly distribution and generation) to support a free-flowing market place.

Concerns have been raised about utility control of NEPOOL and what that may mean in terms of the continued viability of NEPOOL in a restructured market.[25] We note that resolution of this issue has region-wide implications.

An additional concern relates to the adequacy of current state resources (such as those within the Office of the Attorney General) for enforcing existing or new anti-competitive laws in the context of a wide-ranging restructuring the electric industry.[26]

We note that in the wholesale and interstate market, issues related to anti-competitive structure and behavior will ultimately be resolved at the federal level.

F. System Reliability

Reliability of the system is a concern which relates to all levels of the system--generation, transmission and distribution. We note again that the electric system extends beyond Maine's borders, that system reliability is both a state and regional issue and that the resolution of the regional issue will necessarily involve the federal government, particularly the FERC. We are agreed that responsibility for the day-to-day operability of the transmission system should reside with the owner of the transmission system and responsibility for the day-to-day operability of the distribution system should reside with the owner of the distribution system (these owners may or may not be the same entity). As a general rule, the owners should be responsible for constructing and maintaining the respective systems.

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[25] We note that there are debates occurring at the regional level about whether NEPOOL should serve as the ISO while also providing other services it now provides or whether NEPOOL should be stripped of everything but powers and authority associated directly with an ISO role or whether NEPOOL should be disbanded and another entity created.

[26] We heard from the Office of the Attorney General that the office is not looking for additional resources at present. The representative of that office acknowledged that the office has just begun its consideration of restructuring issues.

A separate question involves whether these owners should possess some sort of monopoly authority, co-extensive with their responsibility, to exclude others from building, owning and operating transmission or distribution systems. We note that insofar as interstate transactions are involved, FERC will likely play a dominant role in deciding this issue.

As has been mentioned earlier (see subsection B), there may be a role for an independent system operator to ensure the effective and reliable dispatch of power through the transmission grid. Power flow through the system will remain fundamentally unchanged; electrons will continue to flow through the system according to the laws of physics not the laws of the market. Power will flow into the system and flow out of the system in spite of and without any direct relationship to who may be buying and who may be selling the power. Dispatch will not involve any attempt to get a particular electron from seller A to buyer B. Dispatch will involve managing the inflow of power based on a careful tracking of the outflow of power on a system-wide basis. Obviously, such a function will need to be handled on a regional basis.

Reliability of generation involves whether there is sufficient power in the system to meet customer demands. Since, as described, contract and power flow paths will not track each other, the failure of a generator to provide contracted-for power may affect the whole system, not merely the individual buyers. Again, the issue is fundamentally a regional issue. Some members of this group have suggested that reliability of generation will be adequately ensured by the marketplace and that no special regulatory provisions are required. Others have suggested there may be a role for regulation to ensure reliability.

G. **Transmission Planning**

Long-term transmission planning will be handled differently in a competitive market. We note that such planning relates intimately with the issues of system reliability, energy supply planning, demand-side management and the promotion of renewables.

A fundamental issue is how expansion and maintenance of the transmission systems should be managed. It is obvious that management of customer demand can have a significant affect on the need for construction or up-grade of transmission facilities. The question is whether it can be assumed that the market will naturally employ appropriate demand-side management ("DSM") or whether there is a need to create some regulatory mechanism or structural feature to

promote DSM.[27] Some have suggested DSM will need to be promoted or mandated. Some have suggested a role for distributed generation.[28] Others have indicated they trust the market to sort out planning needs within the market, including the role of DSM in addressing issues related to transmission.

Current law requires electric utilities to acquire from the PUC a certificate of public convenience and necessity before building power lines.[29] This and other types of economic regulation may be inappropriate in the restructured market. We note that under current law, utilities enjoy some eminent domain authority.[30] In a restructured market, who should possess such eminent domain authority? Should only utilities possess that authority? Clearly, there are competitive issues imbedded in these questions.

We note that adequate and even excess capacity within the system is a prerequisite to a functional electric market. We assume the market will ensure this capacity is created; if it is not, some mechanism would need to be imposed to ensure it.

We note that an ISO, if created, would play a significant role in this type of planning. The relationship of the ISO to the system which it operates (the transmission system) will need to be clearly established; anti-competitive issues, discussed earlier, will need to be considered in this process. Again, creation of an ISO is a regional issue.

The implications to distribution planning, while probably less, may also have some affect on restructuring.

H. Energy Supply Planning/Promotion of Renewables

Current energy policy encourages the use of indigenous and renewable resources and conservation with the goal of reducing energy use and ensuring a diverse and reliable energy mix (see background discussion). A plan for restructuring could either trust the market to achieve these goals or be designed specifically to promote them.

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[27] DSM includes such things as time-of-use pricing, interruptible service, installation of conservation devices at the end-use etc.

[28] "Distributed generation" refers to local generation used to meet local peak loads and/or to obviate the need for upgrading or constructing new distribution lines.

[29] 35A MRSA section 3132.

[30] 35A MRSA section 3136. It is worth noting that electric utilities also presently enjoy less restrictions than others on their ability to construct lines in and along public ways (see 35A MRSA section 2305).

Technologies to make use of certain renewable energy sources (e.g. solar, wind, tidal) are not yet fully competitive with other options in today's market. Some in this group believe that a mechanism should be in place to support commercialization of competitive technologies to exploit these renewable resources. Some have suggested a wires charge, to be paid for by all purchasers of electricity, to fund such research and development. Others have suggested a general tax. Others believe this should be left to the market.

Some in the group are concerned that some small generators (e.g. small, remote hydroelectric facilities) may only be competitive in a restructured market if they allowed to aggregate resources. Some have suggested that to the extent that this aggregation does not create an anti-competitive arrangement, it should be permitted and perhaps encouraged. We have not explored this issue in depth but we are not aware of any existing laws, other than anti-trust laws, which would interfere with such aggregation.

I. Old Source Review

Under current federal law, certain old utility plants (particularly old coal plants in southern New England and the mid-west) are subject to weaker emission standards than new plants. In consequence of this and other factors, these facilities are often relatively inexpensive to operate. Because of surplus capacity, many of these plants are either not operating or are operating at less than 100% of capacity. In a restructured market in which energy could be sold outside the region, cheap power would obviously be highly marketable. Many of these old facilities could under certain circumstances be operating at a higher percent of capacity. This could cause significant emissions which the Maine Department of Environmental Protection has suggested would be transported into Maine. This would require Maine, under the federal Clean Air Act, to impose more restrictive emission standards on in-state industry.

In light of these facts, some in the group have suggested that older utility plants should be required to meet emission standards similar to those required of the newer plants. Others feel that to do so would put Maine at a competitive disadvantage because Maine will be unable to regulate out of state generation sources; such sources may continue to operate but may sell their power elsewhere.

This is a regional problem requiring a regional or federal solution. It could have significant environmental and economic effects in this state and some in the group believe it should be carefully considered in the development of any restructuring plan.

J. Demand-Side Management

Efficiency at the end-use (DSM) can reduce customer costs and reduce or replace the need for new or upgraded generation, transmission and distribution facilities. Current law requires electric utilities to develop and implement DSM programs and gives DSM a preference over other power supply options.[31]

Some in the group believe that in a free market, economic efficiency will promote energy efficiency, and that, consequently, there is no need to superimpose on the market any regulation or structure to promote DSM . Alternatively, some believe that while market incentives for efficiency may be imperfect, the costs and imperfections of regulatory intervention may exceed the benefits obtained. Others believe that there may be incentives in a restructured market to avoid DSM (e.g. there may be incentive for a distribution company to sell more not less kilowatt-hours if stranded costs are recovered through some mechanism attached to kilowatt-hour sales). In addition, some feel that even while the market may provide incentives for investment in some DSM (e.g. marketers or load aggregators marketing nega-watts), long-term opportunities which ought to be pursued will not be pursued without some incentives or supports built into the system.

One mechanism for promoting DSM (or, rather, for removing a barrier to DSM investment--capital costs) might be to require generators to offer DSM financing arrangements to customers: The generator would pay the up-front capital cost of installing the DSM (e.g. a new, more efficient refrigerator, a water heater wrap, etc.) and the customer would pay the generator under a power purchase contract. Since the customer would be purchasing less energy, the customer would be required to pay to the generator the cost of the saved energy (as though the customer were purchasing it) until the cost of the DSM mechanism was paid off. Some in the group are opposed to this mechanism because they believe it would create a market disadvantage for electricity generators *vis-à-vis* other energy providers.

Another suggestion is to establish a surcharge on use of the distribution system ("wires charge") which would be collected and used to support DSM, at least during the transition to a fully functioning market. Some are concerned that this approach could distort price signals or promote cross-subsidies. An alternative might be some sort of surcharge collected on sales of all fuels (oil, natural gas, wood, electricity, etc.). Another alternative would be to raise revenues for DSM through a general tax.

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[31] See 35-A MRSA, section 3191

We are agreed that DSM has many benefits and should not be discouraged. We are not in agreement as to whether DSM needs directly to be supported or, if it is supported, how it should be supported.

K. Low-income Protections

Current law and commission decisions require investor-owned electric utilities to collect through rates certain amounts ($5.5 million for the three investor-owned electric utilities) to fund low-income programs.[32] Current regulations also control the disconnection of customers in the winter for nonpayment of bills.[33]

We are in agreement that protections for low-income customers should continue. The means of funding low-income programs, however, is in dispute. We are concerned that this dispute not result in no funding or in a shift of the costs to local government (property taxes).

Some members suggest that funding should continue to come through charges within the electric system, most likely a non-bypassable wires charge (possibly separately identified on the bill so that it is not a hidden fee). Others suggest that a surcharge on the sales of all fuels would be more appropriate. Others feel that low-income programs should be treated as other welfare programs and funded from general tax revenues.

L. Stranded Cost Recovery

From the perspective of the utilities, stranded cost recovery is perhaps the most important transitional issue associated with restructuring. Members of the group representing CMP, BHE and MPS have identified the components of each utility's costs which they believe could potentially become stranded by restructuring (Appendix C). They have also suggested the order of magnitude of these costs over time, based on certain assumptions. Eastern Maine Electric Cooperative has identified a regulatory asset resulting from its Seabrook involvement of approximately $14 million. This will be recovered by the end of 2003 and until that date is a potentially stranded cost for that utility.

Predictions about such costs may be no better than the avoided cost predictions of the 1980s. The utilities suggest that unless there is adequate provision for recovery of potential stranded costs, their solvency would be placed in jeopardy by restructuring. Since time is expected to have an ameliorative effect on stranded

[32]See 35A MRSA section 3153-A(1)(G).
[33] PUC Rules c. 81.

costs, some in the group have suggested that the transition to a competitive market be delayed for 5-10 years.

It has been suggested by some members of the group that instead of attempting to define and address stranded costs, policy makers should focus on whether the value to society created by restructuring exceeds the costs to utility shareholders, NUGs, customers and others. Others have suggested that stranded costs need to be defined and calculated, a mechanism established to ensure mitigation by utilities and a mechanism established to permit utilities to recover some agreed upon amount (probably with some true-up mechanism to deal with unexpected changes over time). Others have proposed that the resolution of the issue be left to the PUC.

A key element of any stranded cost recovery mechanism is the identification of who pays. Should all customers using the distribution system (which would likely continue to be owned by the utilities) be required to pay a non-bypassable wires charge? Should customers who leave the system pay an exit fee or customers who return pay an entrance fee? Should recovery be funded through general tax revenues? Should utility shareholders shoulder the burden? Should those who benefit from restructuring bear its costs proportionately? There are obviously a number of possibilities. Members have offered a variety of proposals which are summarized in chart B.

M. Customer Complaint Redress; Billing

Under the current regulatory structure, customers deal with one regulated utility; if they have complaints about any aspect of their service, there is an opportunity to seek redress through the PUC. In a restructured market, a customer would likely deal with multiple entities: one or more generators, one or more transmission companies, a distribution company, perhaps a load aggregator, perhaps others. This raises a series of questions: How will customer complaints be dealt with? How should disputes about charges flowed through the distribution company (e.g. energy charges) be resolved? Will disconnection be an option for dealing with nonpayment by a customer of flow-through charges? Should there be a provider of last resort? If customers are not disconnected, who pays the costs incurred by the various functional sectors within the system? If disconnection is allowed, who is responsible for making the choice to disconnect and under what conditions will it be permitted?

Some have suggested the need for a mechanism to certify sellers to ensure against fraud and other abuses and to ensure prompt resolution of operating problems. This function might reside with an ISO: certification could be a prerequisite for access to the system. As part of the certification process, it might be possible to require generators to agree to share some of the risk of customer

payment delinquency. Any approach involving an ISO would presumably require regional agreement.

Customers will obviously need understandable bills. Should the various billed items (generation, transmission, distribution and other service charges) be separated or somehow combined into one unified bill? This and other similarly rudimentary issues will need resolution in order for restructuring to succeed.

N. Real-time Metering

Under the existing monopoly system, exact metering of when power is used by a particular customer is not necessary (although it can be useful and is available) since customers purchase power on a price-averaged basis from a power mix managed by the utility to meet all needs within the system. In a competitive market where customers contract to purchase specific power from a particular source, real-time metering to exactly track individual usage may be necessary; buyers and sellers may need this information in order effectively to contract with each other. If real-time metering or other technology is necessary to ensure effective competition, there may need to be some mechanism to ensure all customers have affordable access to such technology.

CHART "B"

Stranded Investment
Work Group on Electric Industry Restructuring

Proposal	Recoverable Components	Unrecoverable Components	Mitigation	Who Pays	Preconditions
1) IEPM Julie Rowe	• costs "verified" and "rigorously measured"		• divestiture of generation assets • competitive wholesale market	• broadly allocated among all customers	• fully competitive market • develop plan for restructuring • sanctity of contract
2) CLF Dan Sosland	above market, sunk costs • fixed capital costs, generation • power contract costs • unfunded future obligations associated with generation ownership			• All persons using "the wires" ("non-buy passable distribution charge")	• Don't segregate this from "other system costs" • develop model of electric utility structure
3) Utilities Rick Woodruff Bob Briggs Steve Johnson Mary Ann Lynch	• All stranded costs (revenue customer would have paid to utilities minus market value of power customer would have purchased)		• "high priority" for utilities	• departing customers	
3A) Utility Bob Briggs			• reduce NUG (incinerator) contracts to market level (education of public re: costs & price signals)		
4) Tony Buxton (IECG)					• "effective constraints on anti-competitive behavior" • "determination of benefits of restructuring proposals" (reasonable estimate of the value created by restructured market
5) Public Advocate Steve Ward (Laurie LaChance Bill Layman Mary Henderson Jim McGregor)	partial recovery • canceled plants, subject of previous regulatory action • IPP contracts or buy-outs, subject of previous regulatory action • DSM, deferred recovery • certain deferred costs	• deferred taxes if assets continue subject to regulation • prospective excess over market IPP contracts which not undergone PUC prudence review • mitigation costs in excess of stranded cost reduction	• divestiture of generator assets • renegotiation of credit agreements • IPP contract negotiation • good management • mergers/consolidation • off-system sales • SC tax write off maximized	pro-rata calculation of cost responsibility • exit fee • back-up/stand-by rates • reconnection charges • DSM charges • no further assessment of captive customer • SH pays unreasonable SI	address stranded benefits • universal service/ obligation to serve by disco • low-income protection • DSM commitment • reliable service • SH bear going-forward losses
6) Gordon Weil (Dirigo)	• SC associated with advent of retail competition; costs, not lost revenues • Seabrook • cost of direct assignment of facilities • demand ratchets associated with specific customer	• lost revenues	• asset salvage • payments by new suppliers • sale of asset • refinancing • buyout/buydown • "relief from obligation"		• "negotiating framework" created

O. Retail Marketing

Retail marketing is a function which will clearly need to be provided in a competitive electric market. There will likely be independent power marketers in any competitive system that is created. The distribution system owner may also wish to market power, particularly if that entity owns or holds interests in generation. If the distribution system is operated as a monopoly, the owner would presumably be regulated as a monopoly. If the owner is permitted to market generation in which it has an interest or which it owns, there may need to be a separate regulatory treatment of the non-monopoly marketing functions.

3. Proposals for Restructuring

Various proposals for restructuring were offered by members of the group in the course of the group's work. Those proposals are summarized in Chart C.

A subgroup of the Work Group developed on its own a more detailed proposal which was discussed at the Work Group's penultimate meeting. That proposal ("Paradigm Proposal") is attached as Appendix D. Many members of the group provided written comments on that proposal; these are attached as Appendix E. At the final meeting of the Work Group, two alternative proposals were offered ("Alternative Proposal #1" and "Alternative Proposal #2"). These are attached as Appendix F and Appendix G.

At the final meeting, the group voted on Alternative Proposal #1 and Alternative Proposal #2. Alternative Proposal #1 (see Appendix F) received 8 votes. Alternative Proposal #2 (see Appendix G) received 4 votes. Copies of the voting sheets are included with the two alternative proposals in the respective appendices.

CHART "C" RESTRUCTURING PLANS

	PRINCIPLES	MARKET STRUCTURE		STRANDED BENEFITS		OTHER
PROPOSAL		GENERAL	Energy	Social	Environmental	
1) Public Advocate	• All cust. rate reduction • Rate regulation reduction must parallel increase in effective competition	• Provider of last resort • Statutory right of affordable access		• Cont. low-income programs • PUC-juris. elect. providers must support universal access fund		
2) BHE	• SC resolved • Competition assumed good • Trans. pricing/access resolved • Retail comp. is regional	• Unregulated Gencos • FERC-regulated Transco • PUC-regulated Discos • Unregulated Salescos	• Costs of these programs moved out of the electric system			• Functional unbundling and regulatory unbundling required • Divestiture not required
3) Maine Merchants	• SC resolved • Reliability top priority • Universal service assured	• Unbundling • Load aggregators • Provider of last resort • PUC monitoring of new system • Power marketers		• Universal service right • Preserve reliability		• Reconversion system if restructuring fails
4) CMP	• Universal buyer/seller access to competitive market • SC resolved	• Ind. Sys. Operator • Load aggregators (may be same as disco) • Gencos (reg & unreg.) • Regulated Transco • Regulated Discos	• DSM provided by competitive market	• Disco=provider last resort • ISO assures bulk power reliability • Low-inc. programs paid for through taxes	• EPA/DEP	• Functional/corporate unbundling or divestiture choice should be utl.'s
5) Dirigo	• Retail comp. inevitable • Retail wheeling good • Don't impede competition • SC resolved	• No need to prescribe form • Some reg. will be necessary	• Programs continued funded through access fee (Disco)			
6) CLF	• SC resolved	• Unreg. Gencos • FERC-regulated Transco • PUC-regulated Discos • Ind. Sys. Operator • Powerpool (NEPOOL or other entity)	• Preserve DSM • Wires charge to pay • Green marketing	• Preserve basic benefits • Wires charge to pay	• OSR (upgrade license requirements) • Emissions trading	• Address market power through unbundling (perhaps divestiture)
7) MPS	• Assuming completely • Competitive retail market • SC resolved	• Unregulated Gencos • FERC-regulated Transco • Some provider of last resort	• Least-cost planning • DSM • Pricing to inhibit demand All "cease to apply"	• Utl remains provider of last resort (market-indexing pricing)		• Poolco problematic • Utl choose unbundling method
8) Tony Buxton	• Achieve free market • Freedom of access/entry/contract/ association	• ISO Voluntary pools Separate Gencos • Bilateral contracts		• Preserve "universal service" (various suggestions for achieving)		• Divestiture of utility generation or new rules to prevent market power

ISO=independent system operator SC=stranded costs DSM=demand side management OSR=old source review

APPENDIX A

APPROVED

JUL 3 '95

BY GOVERNOR

CHAPTER

48

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-FIVE

S.P. 386 - L.D. 1063

Resolve, to Require a Study of Retail Competition in the Electric Industry

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is immediately necessary to begin the study of an orderly transition to a competitive electric energy market to ensure that the transition is orderly and conducted in the best interests of the State; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Study. Resolved: That the Public Utilities Commission and the Work Group on Electric Industry Restructuring, which is created by this resolve, shall conduct a study of the electric industry in order to develop plans, consistent with the public interest, that establish guidelines and requirements for an orderly transition to a competitive market for retail purchases and sales of electric energy; and be it further

Sec. 2. Issues. Resolved: That the Public Utilities Commission and the work group shall study the issues associated with the orderly

transition to a competitive market for retail purchases and sales of electric energy, including at least the following:

1. How utility stranded investment is defined and calculated and how it will be dealt with;

2. How the regional marketplace and federal law affect the transition;

3. How the State's energy policy, including policies concerning conservation, use of renewable and indigenous resources and diversity of supply, will be affected;

4. How the State's environment and environmental policies will be affected;

5. How social policies, including low-income programs and universal service goals, will be affected;

6. How ratepayers, shareholders of investor-owned electric utilities, owners of consumer-owned electric utilities and other owners of energy resources will be affected;

7. How the State's economy will be affected;

8. How reliability of service will be affected;

9. How obligations of contracts will be affected;

10. How a system for the transmission, distribution and generation of electricity should be structured; and

11. To what extent protections against anticompetitive practices can be provided; and be it further

Sec. 3. Work group created. Resolved: That the Work Group on Electric Industry Restructuring, referred to in this resolve as the "work group," is established; and be it further

Sec. 4. Work group membership; meetings; chair. Resolved: That the work group consists of 18 members as follows:

1. Four Legislators who must be members of the Joint Standing Committee on Utilities and Energy, appointed jointly by the chairs of that committee;

2. One member representing the State Planning Office, appointed by the Governor;

3. The Public Advocate or the Public Advocate's designee;

4. One member representing the Public Utilities Commission, appointed by the chair of the commission;

5. One member representing Central Maine Power Company, designated by the president of the company;

6. One member representing Bangor Hydro-electric Company, designated by the president of the company;

7. One member representing Maine Public Service Company, designated by the president of the company;

8. One member representing the consumer-owned electric utilities, designated by Dirigo Electric Cooperative;

9. One member representing small business customers, appointed by the Governor;

10. One member representing the Industrial Energy Consumer Group, designated by that group;

11. One member representing the Conservation Law Foundation, appointed by the foundation;

12. One member representing the Independent Energy Producers of Maine, designated by that group;

13. One representative of Maine Yankee Atomic Power Company, designated by the president of the company; and

14. Two members appointed by the Governor representing the interests of low-income or elderly customers.

Appointments and designations must be made no later than 30 days following the effective date of this resolve. The appointing and designating entities shall notify the Executive Director of the Legislative Council upon making their appointments or designations.

When the appointment and designation of all members of the work group is completed, the chair of the Legislative Council shall call the work group together for its first meeting no later than July 30, 1995. The work group shall select a legislative member as chair; and be it further

Sec. 5. Work group study; duties. Resolved: That the work group shall examine at least the issues listed in section 2 of this resolve. To the extent the work group can reach agreement on how the issues should be dealt with, the work group shall

develop a plan for the orderly transition to a competitive market for retail purchases and sales of electric energy. The plan must identify all necessary regulatory and statutory changes. Any plan developed by the work group must be supported by at least 12 members of the work group. The work group shall identify all issues on which the work group can not come to agreement; and be it further

Sec. 6. Staff. Resolved: That the work group may request staffing assistance from the Legislative Council. The work group may also request clerical assistance from the Legislative Council; and be it further

Sec. 7. Resources; procedures. Resolved: That the work group may:

1. Seek and receive funding from governmental entities or from nonprofit organizations for all or portions of the costs of conducting the study. The work group may accept and spend funds only if approved by the Legislative Council and a majority of the work group members approve of the funding source. The Executive Director of the Legislative Council shall administer the work group's budget;

2. Collect and analyze relevant information and data;

3. Conduct literature searches;

4. Conduct legal research and prepare legal opinions on questions within the scope of the study;

5. Hold meetings at convenient times and locations; and

6. Seek and receive assistance and information from any agency of State Government; and be it further

Sec. 8. Compensation. Resolved: That the members of the work group who are Legislators are entitled to the legislative per diem as defined in the Maine Revised Statutes, Title 3, section 2, for each day's attendance at the work group's meetings; and be it further

Sec. 9. Work group report. Resolved: That, unless an extension is approved by the Legislative Council, the work group shall present its findings in a report to the Second Regular Session of the 117th Legislature, the Joint Standing Committee on Utilities and Energy and the Public Utilities Commission no later than November 1, 1995; and be it further

Sec. 10. Public Utilities Commission investigation. Resolved: That the Public Utilities Commission shall conduct a study to develop at

least 2 plans for the orderly transition to a competitive market for retail purchases and sales of electric energy as follows:

1. A plan to achieve full retail market competition for purchases and sales of electric energy by the year 2000. The plan must identify all necessary regulatory and statutory changes. The plan must be accompanied by a detailed critique of the plan addressing at least the issues identified in section 2 of this resolve; and

2. A plan to achieve retail market competition for purchases and sales of electric energy wherever effective competition is likely and to maintain appropriate regulation in areas where it is determined to be necessary. The plan must identify all necessary regulatory and statutory changes. The plan must be accompanied by a detailed critique addressing at least the issues identified in section 2 of this resolve.

In each plan, the commission shall provide a range of estimates of the costs of each affected utility's stranded investment.

The commission shall incorporate into at least one of the plans it develops all portions of any plan developed by the work group that was supported by at least 12 members of the work group.

The commission shall identify the plan which the commission believes to be in the best interests of the State; and be it further

Sec. 11. Commission process. Resolved: That in conducting its study, the Public Utilities Commission:

1. Shall begin no later than January 1, 1996;

2. Has discretion to distinguish issues of policy, to be resolved by discussion and briefing, from issues of fact, to be resolved by normal evidentiary proceedings, including by stipulation. With respect to any issue of fact, or otherwise as the commission determines necessary, consistent with the time deadlines contained in this resolve, the commission may streamline the discovery and the hearing process to efficiently utilize the resources of the commission and the parties while ensuring the determination of facts necessary for its decision-making and for substantiating recommendations to the Legislature;

3. Shall examine information related to the issues listed in section 2 of this resolve that is available from other states and other countries on electric utility restructuring;

4. Shall examine information related to the issues listed in section 2 of this resolve that is available on transitions in other industry sectors from a highly regulated market to a competitive market;

5. To the extent possible, pursuant to its authority under the Maine Revised Statutes, Title 35-A, section 118 and any other provision of law, shall seek input from and share information with regulatory bodies and other entities in the other New England states and other states of the northeastern United States; and

6. Shall conduct a minimum of 4 hearings at different locations throughout the State to receive public comment; and be it further

Sec. 12. Legal effect. Resolved: That none of the findings of the Public Utilities Commission has legal effect. The purpose of the study is to provide information to the commission in order to allow it to make informed decisions in developing its plans and to provide information to the Legislature in order to allow the Legislature to make informed decisions when it evaluates those plans; and be it further

Sec. 13. Report. Resolved: That no later than January 1, 1997, the Public Utilities Commission shall complete its study and submit a report of its findings, including the required plans and critiques, to the First Regular Session of the 118th Legislature and to the joint standing committee of the Legislature having jurisdiction over utilities matters; and be it further

Sec. 14. Committee authority. Resolved: That the joint standing committee of the Legislature having jurisdiction over utilities matters may, by unanimous or majority vote of the committee, report out legislation to the First Regular Session of the 118th Legislature on electric industry restructuring; and be it further

Sec. 15. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

1995-96

LEGISLATURE

Work Group on Electric Industry Restructuring

Personal Services	$1,100
All Other	1,500

Provides funds for the per diem and expenses of legislative members and miscellaneous costs of the Work Group on Electric Industry Restructuring.

LEGISLATURE TOTAL	$2,600

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

APPENDIX B

WORK GROUP ON ELECTRIC INDUSTRY RESTRUCTURING
(Chapter 48, Resolves 1995)

MEMBERSHIP

Appointments by the Governor

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FAX: (207) 782-3098

Honorable Philip E. Harriman
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(Alternate: Eric Samp, General Counsel)
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FAX: (207) 764-6586

Maine Yankee Atomic Power Company:

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Conservation Law Foundation:

Daniel L. Sosland, Sr. Attorney
Conservation Law Foundation
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Anthony W. Buxton, Esq., General Counsel
Industrial Energy Consumer Group
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Stephen G. Ward, Public Advocate
112 State House Station
Augusta, ME 04333-0112
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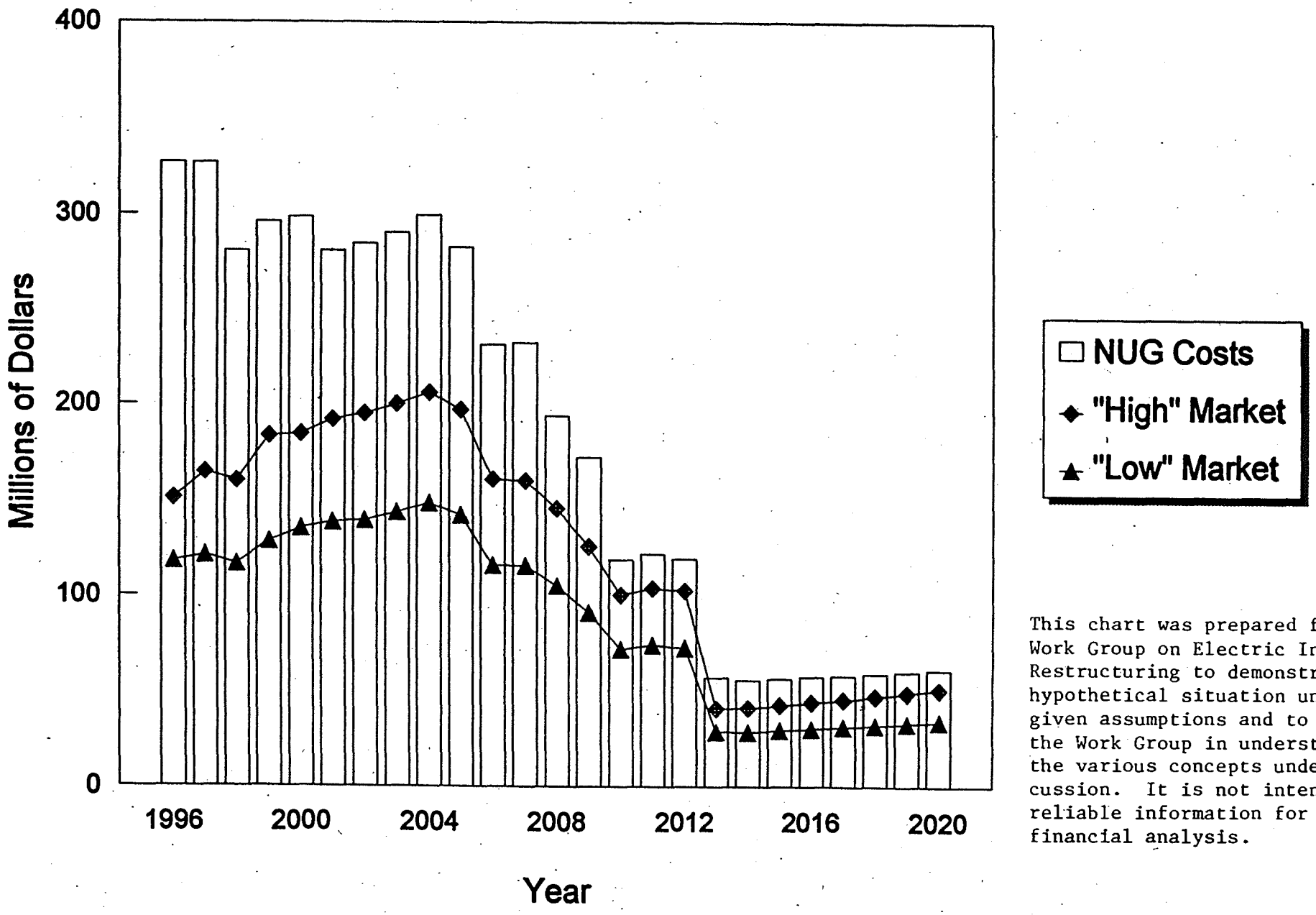
FAX: (207) 287-4317

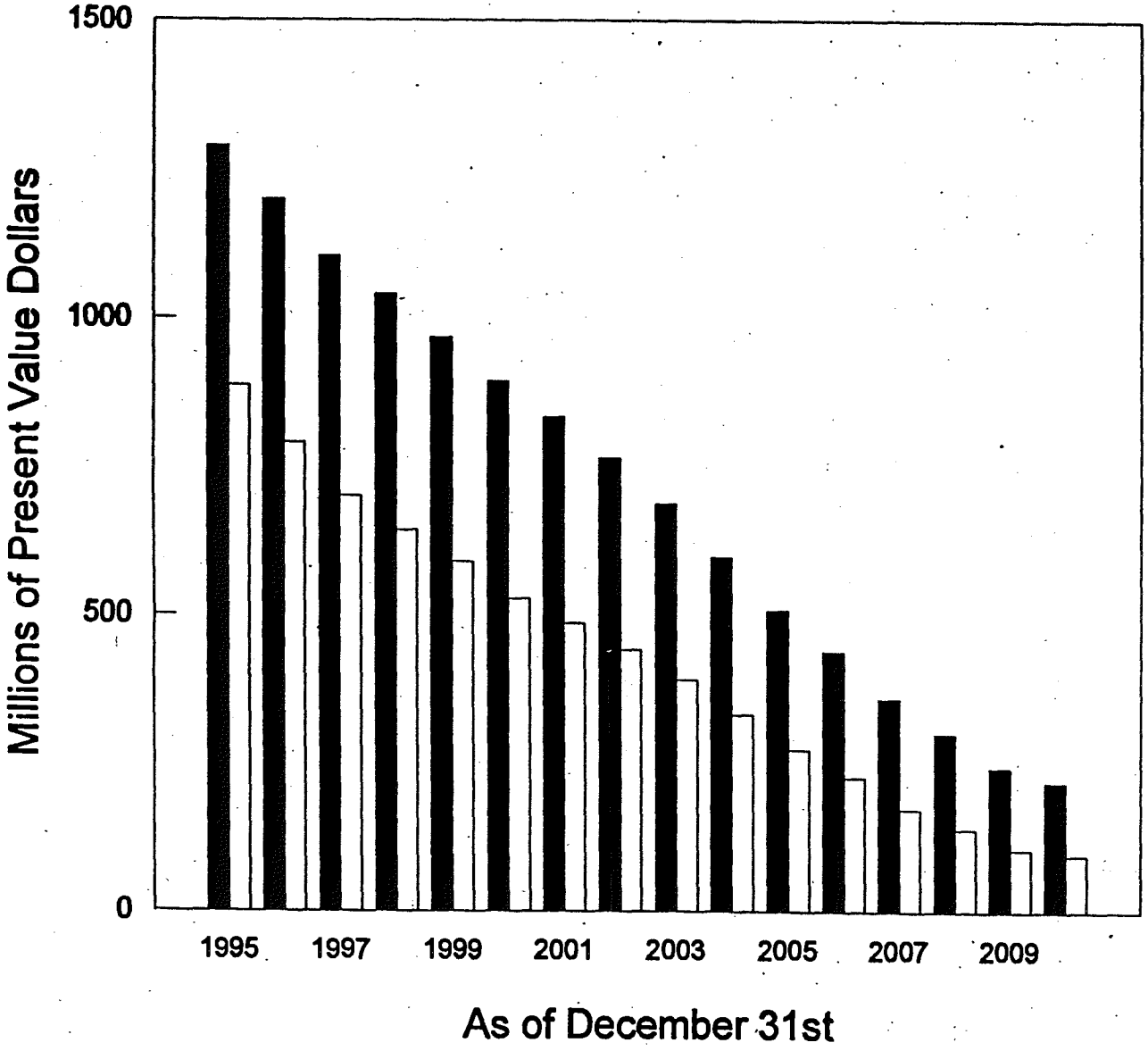
APPENDIX C

CMP's Annual NUG Costs Versus Market Costs



This chart was prepared for the Work Group on Electric Industry Restructuring to demonstrate a hypothetical situation under given assumptions and to aid the Work Group in understanding the various concepts under discussion. It is not intended as reliable information for financial analysis.

Present Value of CMP's Future NUG Costs in Excess of Market Costs



"Low" Market Cost

"High" Market Cost

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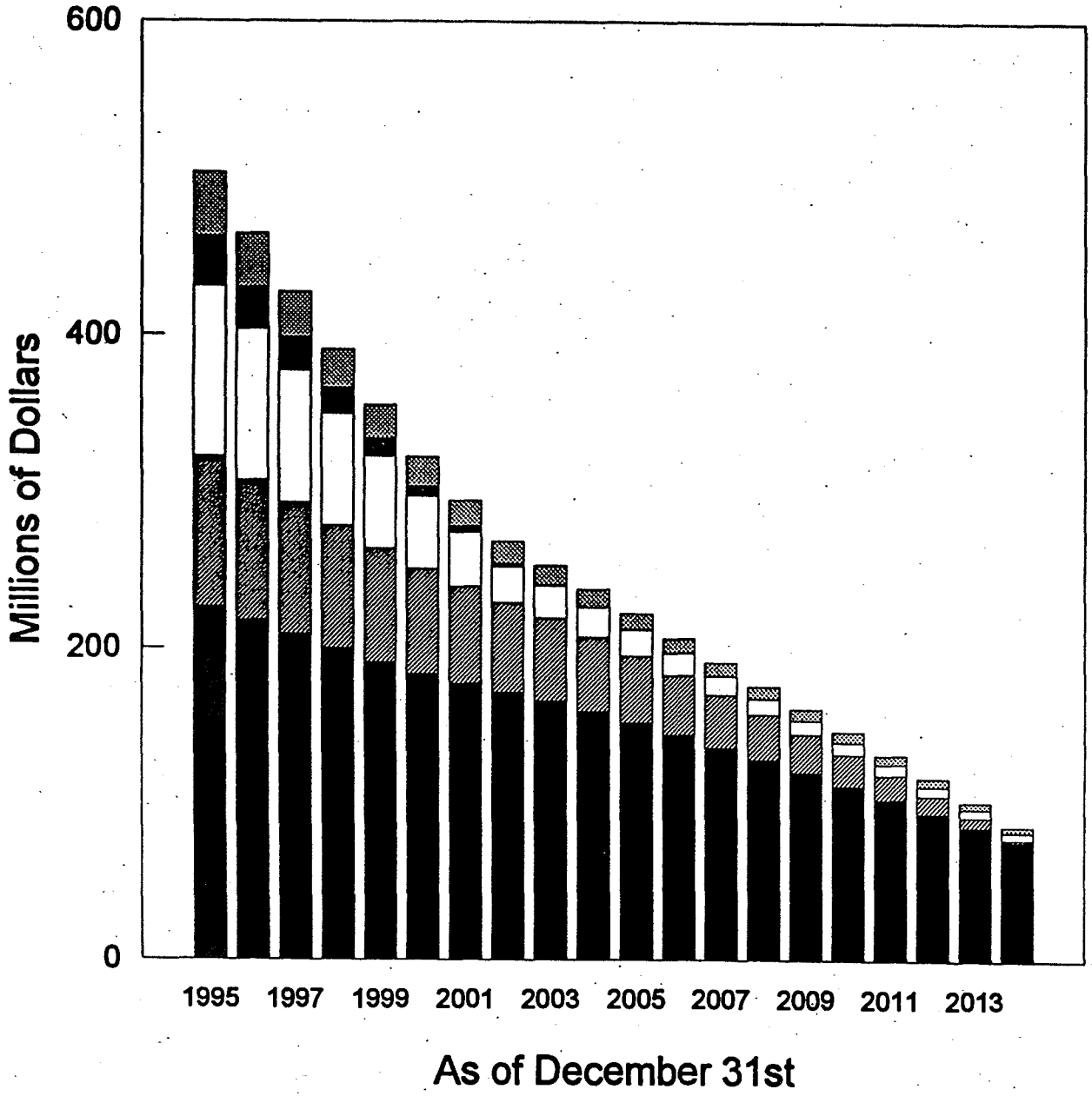
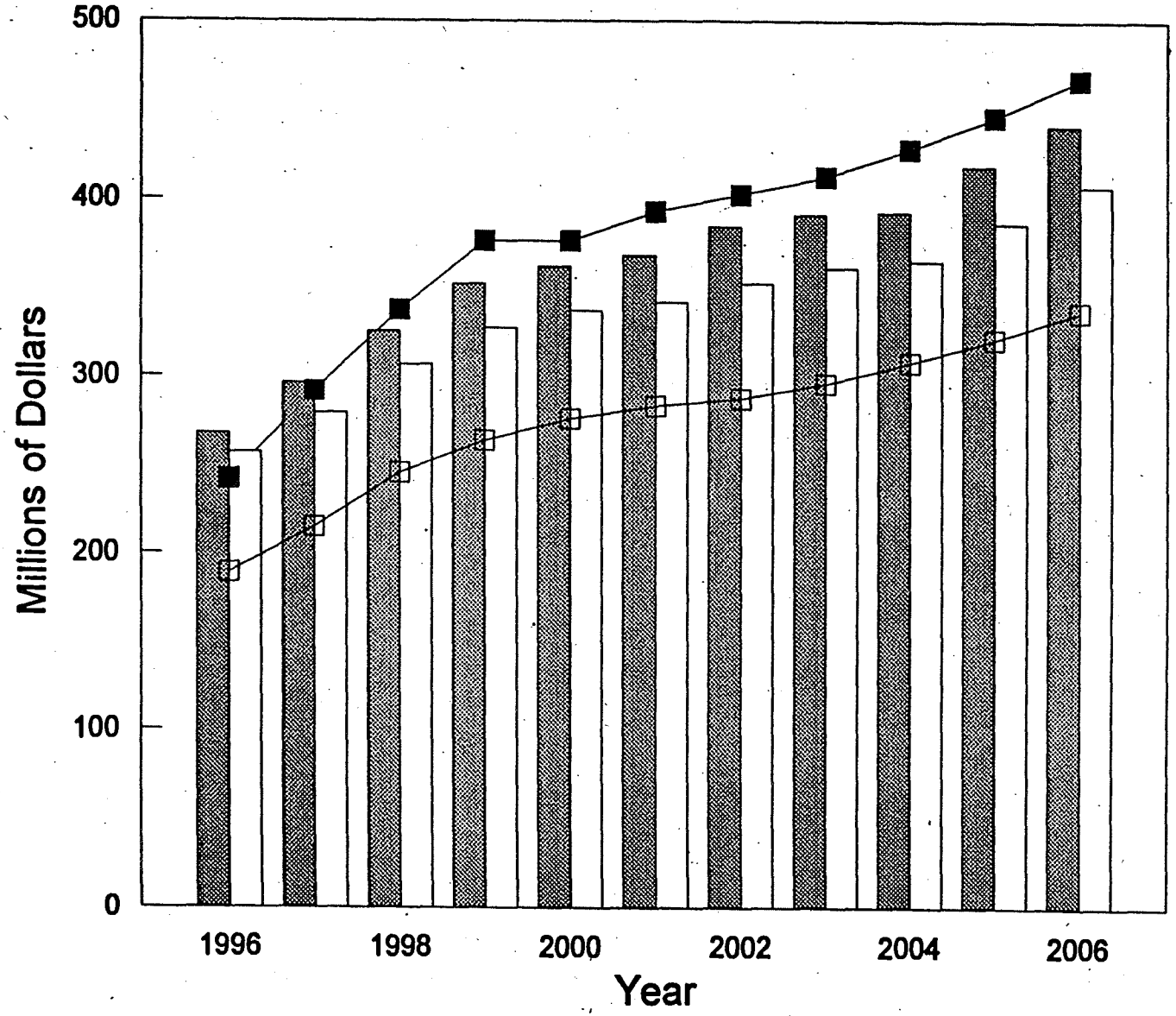
CMP's Deferred Regulatory Asset Balance



- Deferred Taxes
- Cancelled Plant
- NUG Restructuring
- Demand-Side Mgmt.
- Other Def. Assets

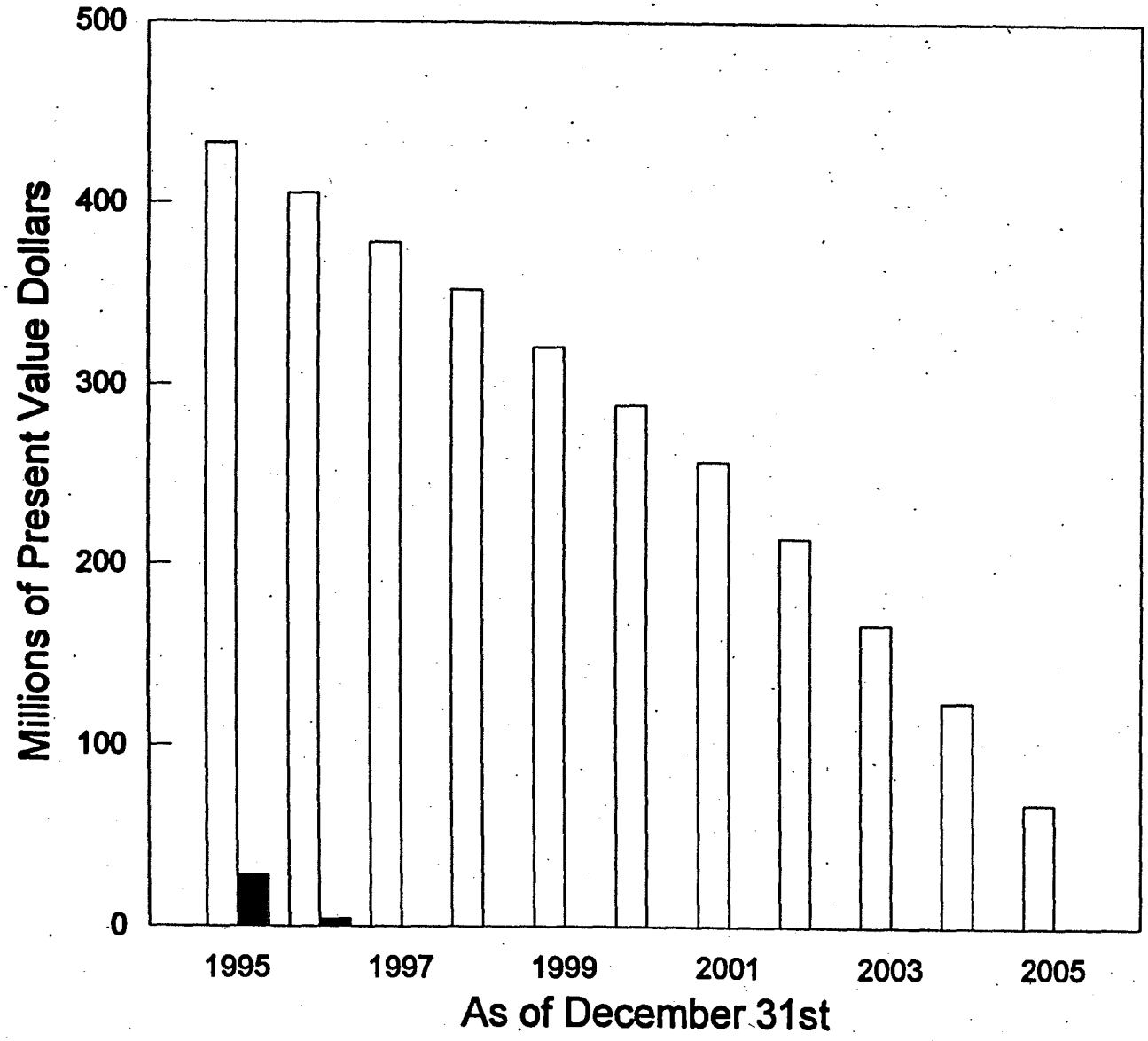
This chart was prepared for the Work Group on Electric Industry Restructuring to demonstrate a hypothetical situation under given assumptions and to aid the Work Group in understanding the various concepts under discussion. It is not intended as reliable information for financial analysis.

CMP's Cost of Existing Non-NUG Resources Versus Market Costs



This chart was prepared for the Work Group on Electric Industry Restructuring to demonstrate a hypothetical situation under given assumptions and to aid the Work Group in understanding the various concepts under discussion. It is not intended as reliable information for financial analysis.

Present Value of Future CMP Generation in Excess of a Range of Market Power Costs



"Low" Market Cost

"High" Market Cost

This chart was prepared for the Work Group on Electric Industry Restructuring to demonstrate a hypothetical situation under given assumptions and to aid the Work Group in understanding the various concepts under discussion. It is not intended as reliable information for financial analysis.

Maine Public Service Company
Production Plant Rate Base as of 12–31–94

	(A) Installed Plant Costs	(B) Accum. Depr.	(C) Net Plant	(E) General Plant Adder	(H) Rate Base Lump Sum C+E
Steam:					
Caribou	4,779,362				
Wyman #4	6,890,689				
Total	11,670,051	7,402,321	4,267,730	1,398,381	5,666,111
Diesel:					
Houlton	222,496				
Caribou	1,633,989				
Flo's Inn	509,115				
Total	2,365,600	2,299,167	66,433	21,768	88,201
Hydraulic:					
Caribou etc.	1,367,640				
Squa Pan	2,363,784				
Total	3,731,424	946,407	2,785,017	912,549	3,697,566
Total	17,767,075	10,647,895	7,119,180	2,332,698	9,451,878
Investment in Subsidiary:					5,267,530
Total Production Plant Rate Base					14,719,408

Stranded

28–Sep–95

Maine Public Service Company
Stranded Costs Associated w/ Wheelabrator–Sherman Contract

		1996	1997	1998	1999	2000
Wheelabrator–Sherman Contract						
Contracted Energy	GWh	126.6	126.6	126.6	126.6	126.6
Contract Rate	c/KWh	12.1	12.7	13.4	14.0	14.7
Total Contract	$000's	15,336	16,102	16,907	17,753	18,640
Present Value @ 10%	$000's	63,652				
Projected Market						
Market Rate	c/KWh	3.0	3.5	4.1	4.8	5.6
Market Value	$000's	3,797	4,443	5,198	6,082	7,116
Amount Stranded	$000's	11,538	11,659	11,709	11,671	11,524
Present Value @ 10%	$000's	44,049				

Stranded Costs Due to Regulatory Assets

Recoverable Seabrook Costs	$000's	30,544

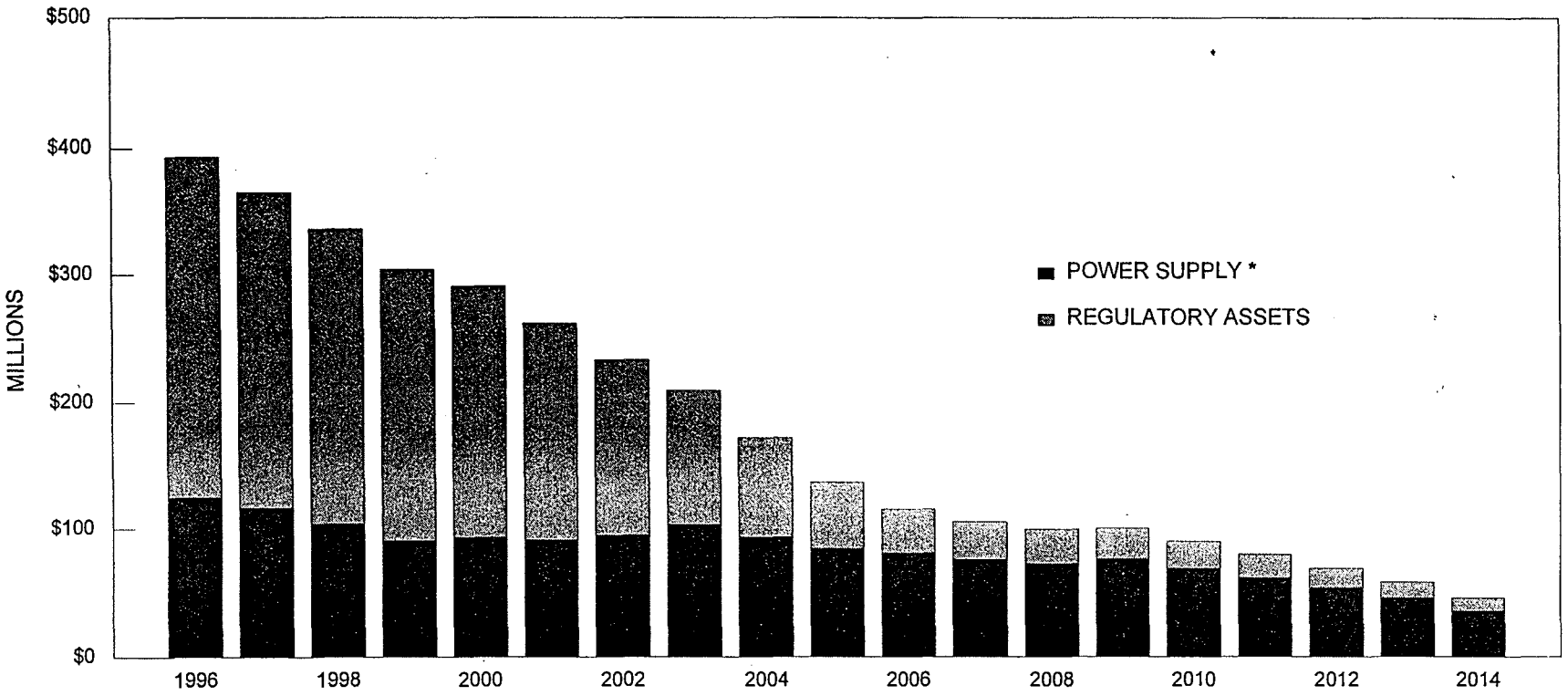
Maine Public Service Company
Regulatory Expenses

Annual Power Pact Expenses	262,955
Demand–Side Management	
Capitalized (12–31–94 Bal.)	518,206
On–going Expenses	70,453
Regulatory Assessments	
MPUC	147,048
Public Advocate	17,171
FERC	31,833
Total Assessments	196,052

PREPARED FOR DISCUSSION AT THE WORK GROUP FOR UTILITY RESTRUCTURING

BANGOR HYDRO-ELECTRIC

POTENTIAL STRANDED COSTS BALANCE



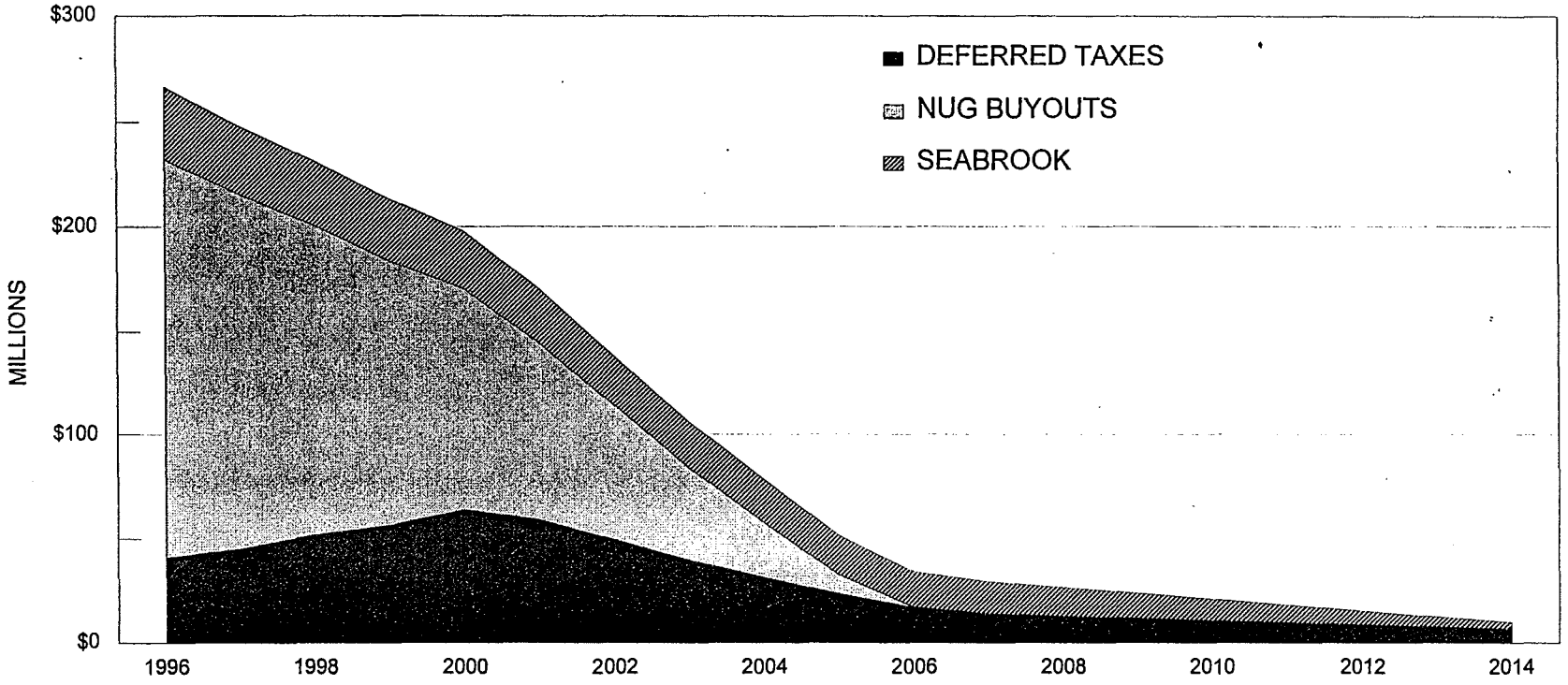
This graph has been prepared to demonstrate a hypothetical situation under given assumptions, to aid the Work Group in understanding various concepts under discussion. It is not intended as reliable information for the purpose of financial analysis.

* Net Power Supply Costs Above or Below Market

PREPARED FOR DISCUSSION AT THE WORK GROUP ON ELECTRIC UTILITY RESTRUCTURING

BANGOR HYDRO-ELECTRIC

STRANDED COSTS RELATED TO REGULATORY ASSETS

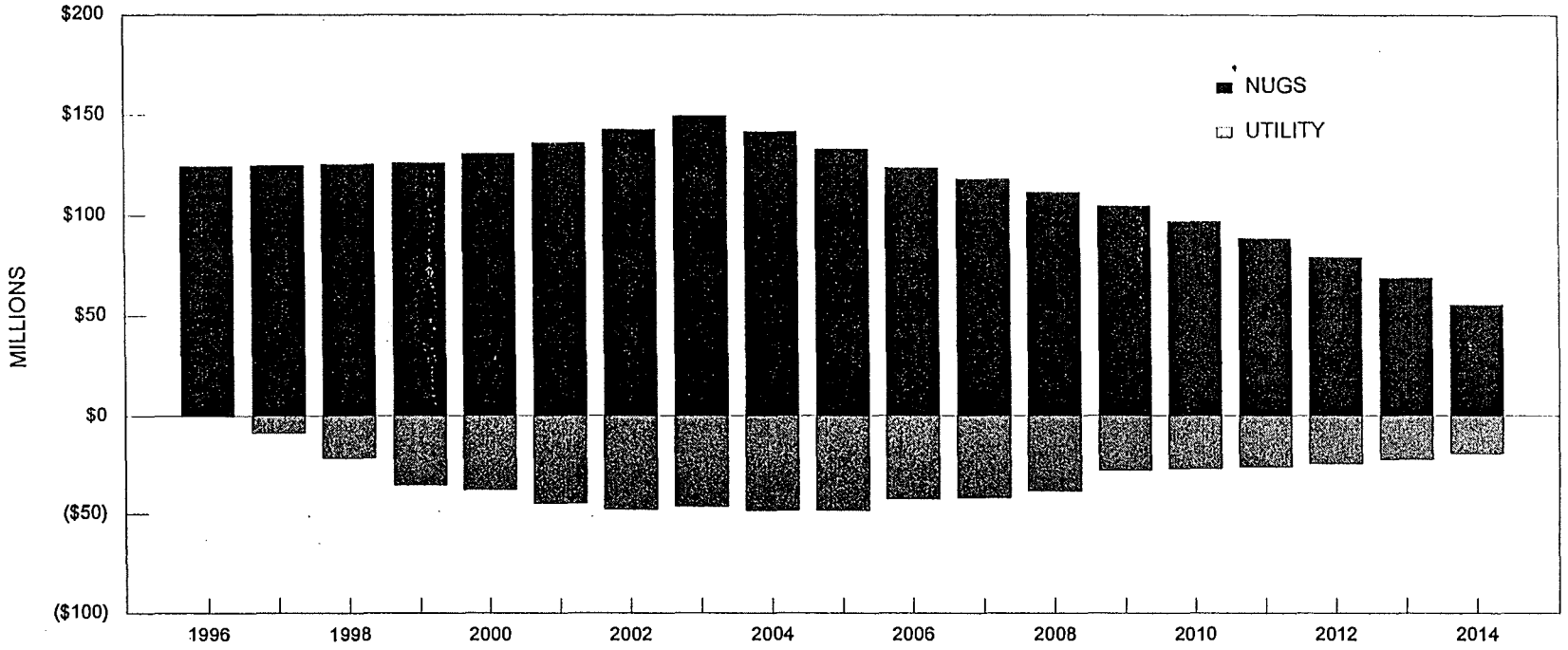


This graph has been prepared to demonstrate a hypothetical situation under given assumptions, to aid the Work Group in understanding various concepts under discussion. It is not intended as reliable information for the purpose of financial analysis.

PREPARED FOR DISCUSSION AT THE WORK GROUP ON ELECTRIC UTILITY RESTRUCTURING

BANGOR HYDRO-ELECTRIC

NET POWER SUPPLY COSTS ABOVE OR BELOW MARKET



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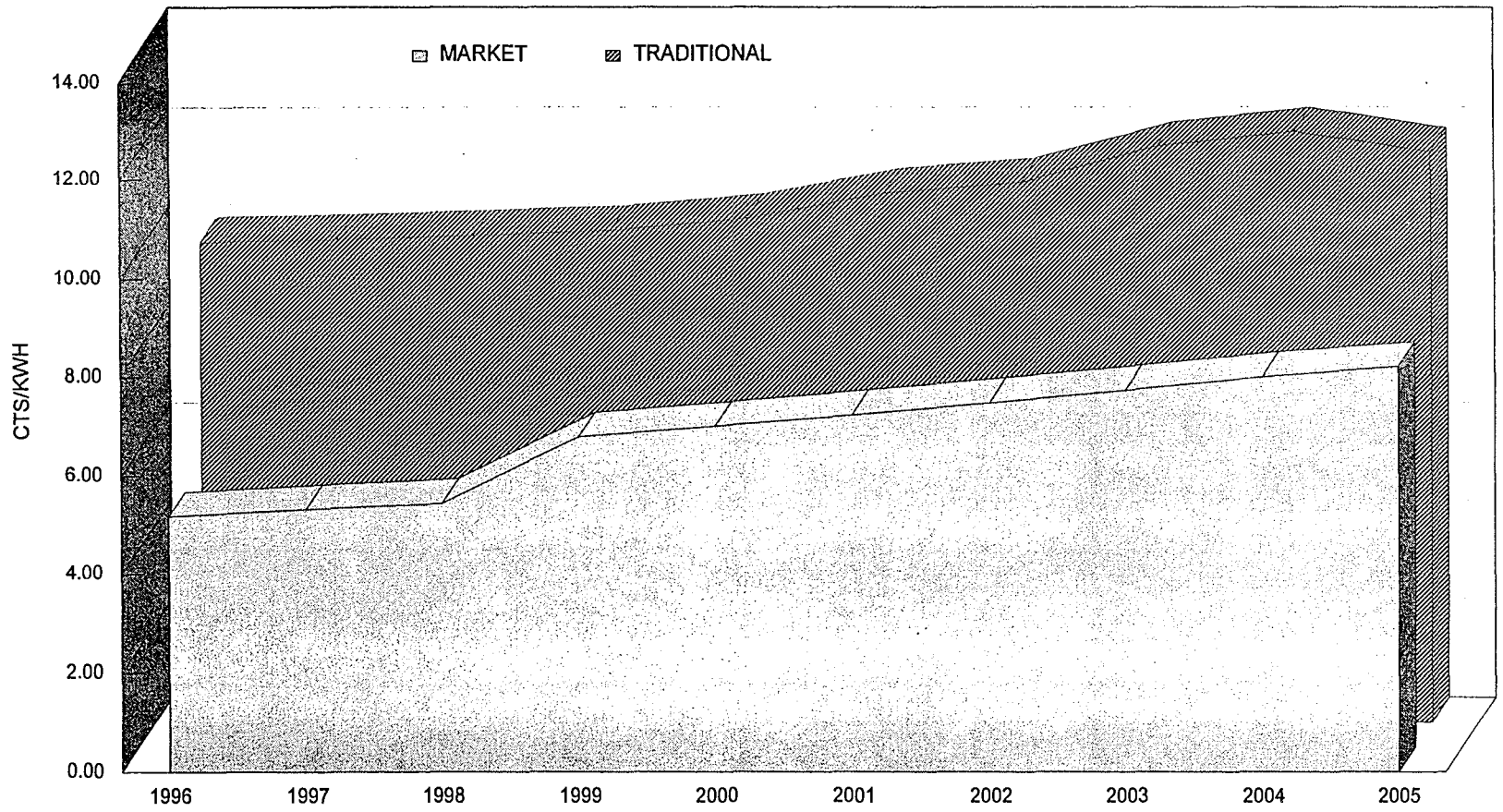
PREPARED FOR DISCUSSION AT THE WORK GROUP ON ELECTRIC UTILITY RESTRUCTURING

BANGOR HYDRO-ELECTRIC

TRADITIONAL VS MARKET PRICE



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APPENDIX D

Angus S. King, Jr.
Governor

Executive Department
PUBLIC ADVOCATE
Telephone (207) 287-2445
FAX (207) 287-4317

Stephen G. Ward
Public Advocate

TO: Senator Phil Harriman
Senator David Carpenter
Senator John Cleveland
Rep. Carol Kontos
Rep. Joe Taylor

FROM: Stephen G. Ward, Public Advocate SW

DATE: November 30, 1995

RE: Multi-party Proposal for Utility Restructuring

After a long gestation period the Sub-Group working on restructuring issues that I wrote to you about yesterday has produced a plan which I attach for your review.

We will present it at tomorrow's meeting. Copies have been provided today by FAX or in person to all members of the Work Group.

E-mail - Stephen.G.Ward@state.me.us
E:\WPDATA\STEVE\LTR-MEMO\LEGIS
State House Station 112, Augusta, Maine 04333 — *Offices Located on* 7th Floor, State Office Building, Room 705

A PARADIGM FOR RESTRUCTURING INVESTOR-OWNED ELECTRIC UTILITIES: A NEW INDUSTRY STRUCTURE

December 1, 1995

PREAMBLE:

This document contains a suggested plan, in accordance with the charge of the workgroup Chair to caucus in groups to fulfill the purposes of the 1995 Legislative Resolve #48, To Require a Study of Retail Competition in the Electric Industry, to restructure the electric utility industry by the year 2000. This plan was formulated with the understanding that the issues and approaches set forth may evolve over time as may the positions of the parties. This plan is submitted to the work group for its consideration with the hope and expectation that all members of the group can support it.

1. Separate distribution, transmission and generation functions

   a. Generation should be divested to ensure against anti-competitive behavior.

   b. Divestiture will occur in conjunction with a transition to a restructured utility industry.

   c. Generation assets will be valued at market value.

   d. This separation of functions, and all other aspects of this plan will not apply to municipal electric districts and REA Cooperatives in Maine.

2. Generation

   a. Economic regulation of power generation (cost of service regulation, certificate of public need requirements, etc.) will be ended and be replaced by market forces.

   b. Effective provisions must be established to ensure against anti-competitive behavior by de-regulated generators through exercise of both vertical and horizontal market power.

   c. Assuming full divestiture, nuclear decommissioning and post-shut down costs (as deemed appropriate by the relevant regulatory body) will be recovered through the wires charge (Section 4{d} and 4{f})of a distribution monopoly that formerly held an entitlement to a nuclear unit.

   d. Formation of power brokers, marketers and customer aggregators should be encouraged.

3. Transmission

a. Pursuant to the FERC NOPR, provision of transmission services is regulated by the FERC.

b. Eminent domain authority is retained by the PUC and will be available to transmission providers, including private entities, by petition upon PUC review and approval.

c. Transmission service will be functionally separated or divested from distribution.

4. Distribution

a. Remains a monopoly regulated by the PUC;

b. Has the obligation to distribute energy to customers and connect any customer to the distribution system;

c. Performs billing services at the request of transmission and generation providers;

d. Collects funds from all customers to support:

i. Stranded asset cost recovery (as settled);

ii. Energy efficiency investment and renewable/clean generation commercialization;

iii. Low income payment assistance programs;

iv. Regulatory assessments to support the PUC and the Public Advocate; and

v. Enhanced consumer protection and anti-trust enforcement activities as will be necessary in the restructured power system.

vi. In no case, however, shall the PUC approve costs for section ii. through v. that in aggregate exceed 5 mills/KWH (including any ongoing recovery of such costs incurred prior to restructuring).

e. Implements least-cost distribution system planning and investment, incorporating existing precedent.

f. All costs described above will be collected on a usage-sensitive basis from all customers of a transmission or distribution provider subject to appropriate rate design.

5. Customer Choice of Energy Suppliers

a. All customers (individually or in self selected groups) will be able to negotiate for direct (bilateral) retail access to any energy supplier registered to conduct business in Maine.

b. All customers will be provided choice of energy suppliers by January 1, 2000.

c. Customers that are fully informed about market options are essential to the operation of a new market structure; the PUC shall ensure the dissemination of relevant information (see Sec. 12).

d. All customers who do not choose a competitive energy supplier will default to a "standard" service option that provides service priced so that the total cost to the customer is no higher than that of the existing service. Customer should be able to leave this default service at any time to take competitive service offerings.

i. The PUC will establish a bidding process to select retail energy suppliers to provide "standard" service.

ii. New bids for "standard" service will be taken every five years.

iii. The prices for "standard" service will be identical for all customers taking service at the same voltage level irrespective of location.

iv. All customers who have been denied service by competitive energy suppliers must be provided service at the "standard" rate.

e. The PUC will retain jurisdiction over billing, connection and disconnection disputes as in current PUC regulation.

f. Customers shall be able to connect with or disconnect from the electric grid without payment of an "exit fee" unless otherwise provided for by contract.

6. Regional Grid Operation and Management

a. The regional grid system will be operated to:

1. Ensure system reliability; and,

2. Facilitate economically efficient power generation; and

3. Ensure open access for all generators to all customers.

b. Grid operation and management will be the responsibility of an independent system operation (ISO) regulated by the FERC.

1. The ISO shall have no financial relationship to any energy provider.

2. The ISO shall be governed by a Board of Governors appointed or elected by the region's electricity consumers or their representatives.

3. ISO responsibilities will include:

a. ensuring open, non-discriminatory access to the transmission system;

b. managing grid operation;

c. maintaining real-time reliability of the system;

d. managing transmission congestion;

e. resolving conflicts between inconsistent power plant generating schedules; and

f. providing imbalance settlement functions.

g. certification of energy providers.

c. Transmission Service

1. Transmission services will be provided under FERC-approved, open access, non-discriminatory tariffs.

2. As proposed in the FERC NOPR, transmission services would be designed and priced to:

(a) encourage economically efficient use of transmission and generation facilities;

(b) send economic price signals for investment in new generation and transmission assets; and

(c) provide for full recovery of costs associated with prudent transmission investments.

d. Power Exchanges

1. Independent regional power exchanges will be encouraged to operate voluntary, market-based auctions for power (for example, for "day ahead" power).

2. Such power exchanges will be regulated by the FERC.

e. Reliability

1. The reliability of the power system must be maintained consistent with national and regional reliability standards and customer's willingness to pay for varying levels of service reliability.

2. Market-based system reliability mechanisms will be implemented wherever practical.

7. Stranded Asset Recovery and Equitable Sharing of the Benefits of Restructuring -

a. The public policy decision to permit electric utility restructuring requires an understanding that the benefits of restructuring will exceed the costs of restructuring, including consideration of uncertainties in such estimations.

b. The determination of costs and benefits of restructuring will be considered in a public forum, such as the PUC, with the availability of conventional legal procedures.

c. The magnitude of restructuring costs and benefits will depend on the ultimate structure of the electric utility industry and the timing of the restructuring. Above market, sunk costs potentially include unrecovered (above market) fixed capital costs of generation ownership and above market power contract costs. Below market assets include a substantial number of generating units and substantial portions of the transmission and distribution system. To the extent that restructuring nets the above market assets with below market assets, there exists the potential for significant mitigation of non-economic costs of electric utilities.

d. Subject to an understanding that there is a public benefit, the benefits shall be apportioned equitably, on a negotiated basis, between ratepayers and utilities. This will ensure significantly lower rates for ratepayers and

significant recovery of non-economic costs by electric utilities. Settled recovery should be through a non-by passable, usage-based wires charge beginning in 2000. The amounts to be recovered and the form of recovery (one time, true up, rate design, scheduling, etc.) will be approved by the PUC.

e. The preferred approach to achieving market value of generation assets is through an auction.

f. In no event will contract obligations be breached, modified or abrogated on an involuntary or unilateral basis.

8. Consumer Protection

a. Appropriate procedures for the registration of retail energy providers will be established and effective at least 12 months before the introduction of retail choice.

b. The PUC shall retain authority over policies regarding connecting customers to and disconnecting customers from the distribution system.

c. The PUC shall oversee billing disputes between the regulated distribution monopoly and competitive energy providers.

d. The PUC, the Public Advocate and the Attorney General will conduct enhanced consumer protection activities designed to deter anti-competitive practices and to address effectively the consumer protection issues created by the use of competitive markets to supply electricity.

The cost of such enhanced enforcement will be included in the wires charge established by Section 4(d) and 4(f).

e. The PUC and the Public Advocate shall intervene as necessary at the FERC to ensure consumer interests in transmission operation and pricing and also in power exchange operation are effectively addressed.

f. No later than January 1, 2003, there will be conducted a review of the staffing and role of the PUC which will evaluate reductions in regulatory expense and changes in staffing patterns.

9. "Stranded Benefits" Provisions

a. Low income customer protection

i. Until such time as the PUC determines that low income customer support services are effectively replaced through an alternative mechanism, existing programs to support low-income customers shall remain in place.

Funds to support such programs shall be included in the wires charge established by Section 4(d) and 4(f).

ii. There shall exist in statute a policy protecting the benefits to the State that result from access to the transmission and distribution system by all consumers of electricity. Recognizing that electricity is a necessity of life that could be jeopardized as a result of the restructuring of the electric industry, it is not the intent of this proposal to reduce to any degree participation in the transmission and distribution system by citizens or businesses in Maine.

b. Energy efficiency investment provisions

i. Objectives:

◆◆Lower customer electricity bills;

◆◆Minimize power system environmental impacts.

◆◆Realize improvements in the housing stock and commercial infrastructure that reduce energy consumption

ii. Efficiency investment shall be considered in least-cost distribution planning.

iii. The distribution monopoly must:

◆◆Maintain adequate investment levels at least through the time when competitive generation markets are fully effective and have initially matured.

◆◆Continue to evolve efficiency investment with emphasis on:

(1) Lost opportunity markets.

(2) Permanent transformation of energy-efficiency markets.

(3) Geographically targeted energy efficiency investments to reduce transmission and distribution costs.

◆◆Establish and periodically review and appropriate budget that meets the above investment objectives through a PUC proceeding.

◆◆When competitive generation markets are fully effective and have matured - to a point where the actual effects of competitive generation can be assessed - the need for mandating demand-side distribution utility investment will be reassessed and appropriate changes or refinements made.

iv. Nothing in this proposal is intended to prevent energy service companies from installing energy efficiency improvements that are paid for by a share of the customer's energy savings.

10. Renewable Provisions

a. Objectives

i. Facilitate commercialization of qualifying clean renewable and fuel cell technologies that could become commercially competitive within the next ten years.

ii. Encourage continued research and development of indigenous, renewable energy resources (solar, wind, biomass, hydro).

b. Specific provisions

i. market structure reforms as described above to provide open access to generation markets.

ii. Least-cost distribution investment.

iii. Establish an administrative process before the PUC to identify technologies that qualify for commercialization support and to identify actions necessary to commercialization such technologies.

iv. The distribution company would conduct activities as identified and approved in the above administrative process.

◆◆Costs of such activities will be included in the wires charge established by Section 4(d) and 4(f).

v. After market structure reforms have been implemented and their effects on qualifying technologies assessed, provide interim subsidy

as deemed necessary by the PUC for qualifying technologies that need such to become commercially competitive.

11. Environmental Equivalency

When Congress enacted the Clean Air Act in 1970, Congress assumed that existing, high emissions fossil fuel powerplants owned by electric utilities would be promptly retired. Congress allowed these existing units to not meet the higher pollution control requirements of other plants, based on that assumption.

The assumption has proven incorrect, as many of these high emissions utility plants remain in service today.

To "level" the economic and environmental playing field between the older, high-emissions utility generating units and newer generators that have been required to meet strict "new source" emissions standards, existing electric utility fossil generation would reduce selected emissions (criteria pollutants - SO2 and N0x) over a transition period to the equivalent of "new source" requirements for same fuel units.

a. Appropriate offset trading would be allowed.

b. Existing unit air emissions licenses would be amended to include these emissions reduction requirements.

12. Energy Security

The PUC (or other unit of government) will have authority and staffing sufficient:

a. To monitor overall system operations beyond the responsibilities of each individual industry sector in order to promote system reliability.

b. To provide information to energy sellers and buyers that is unbiased and accurate regarding the sources and cost of electricity and efficiency improvements.

c. To monitor the diversity of energy suppliers in order to preserve Maine's long-term energy security.

APPENDIX E

Comments of Bangor Hydro-Electric Company
on the "New Paradigm" Proposal
December 6, 1995

We left last Friday's Work Group Meeting with the assignment of submitting written comments on the proposal submitted by Steve Ward and others by the close of business on Wednesday, Dec. 6.

"1. Separate distribution, transmission and generation functions."

In general, we agree that generation is a separate, distinct (and competitive) business. But mandating the divestiture of existing generation investment by Maine's utilities ought not to be adopted. Such a step is unnecessary for Maine's utility customers to achieve the benefits of the competitive resource supply market. Moreover, since most of Maine's generation consists of the Maine utilities' 50% ownership of Maine Yankee and of older hydro facilities, selling those assets under a divestiture mandate will cause the loss of that low-cost energy supply which Maine's customers now enjoy. Instead, the new owners of those beneficial facilities would then be able to "mark up" the price for the output (because they currently produce power at below-market costs, which benefit is now reflected in our rates to customers), and we would have to replace that energy at market prices. Moreover, the New Paradigm proposal envisions that we would keep responsibility for those aspects of the existing generation facilities that would otherwise render them unmarketable (i.e., nuclear decommissioning costs, and perhaps - though not discussed - various issues associated with licensed hydro projects), to remain obligations of the Distco, thereby exacerbating the immediate loss of the low-cost power.

The proponents of the proposal indicate that these penalties could be offset by the benefits of achieving maximum proceeds from the sale of these assets. But the value of these assets in an open market for their sale (and query whether it would be such a market if we were under a divestiture mandate) would only be another way of measuring - in current, capitalized dollars - the value of the assets as power supply resources in a competitive market over time, which is value our customers are already enjoying. At best, then, our customers would only be trading "the bird in the hand" for hopefully at least an equal, and unlikely any more than an offsetting, "bird in the bush".

"2. Generation"

We agree that comprehensive regulation of generation will be reduced or eliminated as that aspect of the business becomes ever more competitive.

"3. Transmission"

We would suggest that eminent domain authority for transmission be taken over by FERC, as is the case for gas transmission. As we have discussed in prior meetings, in a competitive market the focus for the approach to the creation of transmission assets will have to change in any event, and this would be a good time to transfer the function to the Federal level given the clearly

interstate character of transmission.

"4. Distribution"

Our overall comment is the same as I presented at the meeting. That is, the proposal envisions the Distco as the vehicle for the recovery of all the costs that would otherwise be uncollectible in a competitive market, and doing so hinders Distco from being competitive vis-a-vis other fuel sources in a competitive energy market. It is not enough to hope or assume that all distco's are similarly burdened, thus rendering the playing field level as among electricity providers. Electricity is also in competition with other fuel sources, and electricity providers are in competition with customers' self generation options.

As we have indicated before, we envision the Distco to be involved in retail marketing as well - the business of selling electric energy and electric solutions to meet customers' needs and desires in a competitive market for provision of those end-use services, with the goal of increasing sales and market share. To the extent we can succeed at that in a competitive market, efficiency increases and everyone benefits - both economically and environmentally. Moreover - and importantly - succeeding at increasing sales and market share where we can be competitive is the only way that benefits can be created to assist in reducing the burden of stranded costs in any fashion other than simply shifting the costs to others. Thus, it's very important for the Distco's to have the incentive and inclination to increase their business, and likewise important that they not be burdened with the responsibility to recover costs that would hinder the competitiveness of their service.

As a sub-point to the above comments, the New Paradigm proposal suggests that the enumerated costs that would be recovered through the Distco be charged on a "usage sensitive" basis. However, it is unlikely that it will be possible to recover such costs via a per-kwh charge on customers' usage. As is already the case today, customers with choices will elect not to pay that cost by not using the service. For example, though it is the case today that about one-half of one percent of our revenues goes to fund low-income programs, that does not mean that the rate impact of that is spread evenly over all of our customers. In essence, only customers who have no choice but to use our service - and whose ability to haggle about the price for it is limited to input through the regulatory process - are paying for it.

"5. Customer Choice of Energy Supplies"

There seems to be more PUC involvement in the "standard service" option than is likely to be necessary. In concept, such a standard, or "default", service should be priced in accordance with its value as a convenience to customers who elect not to "shop around" for themselves, and taking into account the difficulties inherent in planning and making commitments for such a potentially transitory service. A bid process might be entirely appropriate for establishing such a supply; alternatively, it's possible that such a service might be available from whatever remains of the central dispatching pool. However the service is arranged, it is likely to be at some

premium in price relative to what customers otherwise might expect to achieve on their own.

"6. Regional Grid Operation and Management"

No comments at this time.

"7. Stranded Asset Recovery and Equitable Sharing of the Benefits of Restructuring"

The first paragraph (paragraph a.) implies that a precondition to "restructuring" is a finding that the benefits will exceed the costs. However, the move toward greater competition in our business is inexorable, and must be accommodated. I believe we all are utilizing the term "restructuring" to mean the implementation of that accommodation. In that context, we do not have the luxury of engaging in a process of determining in advance whether the benefits will exceed the costs for the purpose of "permitting" a restructuring.

Subparagraph c., to the extent it defines stranded costs, leaves out a significant portion of those costs (i.e., regulatory assets; commitments for social benefit programs). In discussions at last Friday's meeting, I believe the proposers recognized that this paragraph does not describe all stranded costs.

The premise of subparagraph d. ("... the benefits [of restructuring] shall be apportioned equitably, on a negotiated basis, between ratepayers and utilities. ...") has to be that "restructuring" will create a pool of benefits that can be so apportioned. But that will not happen. To reiterate, "restructuring" is the euphemism we've attached to the idea that we have to accommodate the implementation of greater competition. The impetus for competition is that customers want to take advantage of the observation that, in and of itself, the cost of power on the open market is very low. This impetus is most urgent where embedded utility costs are very high - as in Maine. The problem that we're wrestling with is that these embedded costs represent very real, legitimate obligations that are presently being funded by revenues from customers today. These obligations will not disappear just because we're "restructured" to accommodate competition. They arose because of the historic - and existing - "paradigm" for utilities and their regulation. People made investments and commitments in reliance on their understanding of that "paradigm", and "restructuring" does not provide a rationale or an excuse to, now, institutionally impose the cost of change on those who have supported the system to date. Thus, "restructuring" does not, in and of itself, create any benefits to be portioned among interested parties (though it may produce opportunities for benefits for those willing and able to take advantage of greater competition). In the longer term, many of us do believe that all customers will benefit from the change, because competition always exacts efficiencies that just never seem to be achievable in alternative economic systems. Those of us who believe that will cite the impact of competition on the long-run marginal cost of power as a prime example. In addition, it so happens that there are market opportunities for increased sales and greater market share, and the recognition of that should be a part of the restructuring process. As indicated above, success at achieving greater sales and market share would be a source of benefits to assist in ameliorating the stranded

cost problem.

As a relatively minor point, we assume that the intent of subparagraph f. is that nothing in the institutional process of restructuring will have the stated effects upon existing contract obligations (as compared with, for example, the process proposed by a New York utility in which the intentional impairment of contractual obligations is envisioned as part of the restructuring process). If, however, the intent of this provision is to somehow make existing contract obligations more sacrosanct as a result of restructuring, we would not support that notion. Parties to contracts always have the right to breach. It is a legitimate strategy to which it is understood are attached various economic (but not emotional) costs. Since our obligation to mitigate our potential for stranded costs will be only heightened in a restructured environment, it is important that our arsenal of negotiating tools not be diminished.

"8. Consumer Protection"

No comments at this time.

"9. 'Stranded Benefits' Provisions"

With respect to low income protection, our position is well-known that we believe that funding for low income programs should be shifted to the general fund. This is particularly important in a competitive environment. The rationale that keeps such subsidies in utility rates to the effect that the Legislature will not support such programs as a matter of general taxation is not acceptable. Indeed, it amounts to a highly regressive imposition upon a body of people who have no means of protecting themselves from such levies, and it's no answer to say that "it's a small amount". And as our business becomes ever more competitive, the body of people that are left to support the subsidy will get smaller and smaller.

In any event, in subparagraph a.i., the proposal puts the PUC in an untenable position of "overseeing" the Legislature. The present protections are in place because the Legislature enabled, but did not mandate, them. It would be a presumptuous leap for the restructuring process to lock in the protections until the Legislature had the courage to properly toe the mark.

With respect to the energy efficiency investment provisions, we did not discuss these rather general points in any specificity at last Friday's meeting, and we have no specific comments at this time.

"10. Renewable Provisions"

For the reasons already discussed, we do not believe the obligations envisioned here should be imposed on Disteo. While the advancement of other energy supply options might be a legitimate public goal, it would be more effectively and efficiently addressed directly at the generation level.

"11. Environmental Equivalency"

As in the previous section, we believe the concerns outlined here are best addressed at the generation level. We do not see that the proposers are intended that this obligation be imposed at the Distco level.

"12. Energy Security"

No comments at this time.

R.S. Briggs
12/6/95

Central Maine Power Company
83 Edison Drive, Augusta, Maine 04336 (207) 623-3521

December 6, 1995

Mr. Jon Clark
Legislative Counsel
Maine State Legislature
Office of Policy and Legal Analysis
State House Station 13
Augusta, ME 04333

Re: Work Group on Electric Restructuring

Dear Jon:

In keeping with today's deadline for comments, enclosed please find the following three items:

- Comments of Central Maine Power Company on "The New Paradigm"
- A one page summary of key issues entitled "Critical Questions about the IECG/CLF/OPA Proposal"
- Comments of Central Maine Power on Draft Report Prepared by Committee Staff

We assume that you will make the necessary arrangements for dissemination of these items among members of the Group. Please let us know if that is incorrect.

We look forward to seeing you on the 15th.

Sincerely,

Arthur W. Adelberg

Enclosures

CMP

CRITICAL QUESTIONS ABOUT THE IECG/CLF/OPA PROPOSAL

1. **What will happen to the $2 to 3 billion in strandable costs?** These are costs incurred by utilities in fulfilling their statutory obligation to provide service. The bulk of them are payments owing to NUGs. The plan leaves this critical question unanswered.

2. **How will consumers benefit given that the plan imposes new costs on utilities?** In addition to all the kinds of social and regulatory costs (energy efficiency programs, low income subsidies, funding for the OPA and the MPUC) imposed on utilities today, the plan would add an estimated $50 million in capital costs on Maine's utilities by requiring Wyman Station to meet more rigid environmental standards than the federal Clean Air Act.

3. **Why are NUGs exempted from sharing in a solution to the stranded cost problem?** The NUGs are a principal cause of today's high electric rates, and many of them are believed to be earning extraordinary profits. Yet they are specifically carved out under the plan from being required to share in any of the financial sacrifices which the plan may impose.

4. **What will happen if Wyman Station is forced to shut down?** The costs of meeting the extra environmental standards could force a premature shutdown of Wyman station. In addition to causing a loss of employment for plant workers, Yarmouth could see a further loss of property tax revenue.

5. **How will the plan produce greater efficiency?** Maine utilities already participate in NEPOOL, and are active players in the wholesale power markets. There is no reason to believe customers will be able to negotiate better power arrangements than the utilities currently obtain for them.

6. **Will the interests of residential and small business customers be sacrificed under the plan?** Industrial customers will be best positioned to benefit under the plan, just as large companies have benefited most from telephone deregulation. Benefits obtained by industrial customers could come at the expense of residential and small business consumers.

7. **Will mandatory divestiture of generating assets benefit Maine consumers?** Mandatory divestiture raises numerous complex issues. Most important, however, it could result in Maine's hydro and nuclear resources, which provide extremely low cost power, being sold to out-of-state interests. Maine consumers stand to lose plenty if this occurs.

8. **Why rush to adopt this plan?** There is no reason to rush to judgment, since the MPUC has a full year to review this and alternative plans

COMMENTS OF CENTRAL MAINE POWER COMPANY
ON "THE NEW PARADIGM"

While Central Maine Power Company did not participate in the development of "The New Paradigm", we appreciate the effort involved in formulating a concrete restructuring plan. We ourselves have been studying the underlying issues for the past several months, and expect to be in a position to offer a detailed proposal in the context of the upcoming MPUC process by late January 1996. In our view, however, there are too many major unresolved questions, as well as potential harms to customers and investors alike, for us to support the proposal offered by the IECG/CLF/OPA coalition (referred to below as "the proposal').

Our comments will follow the outline of the proposal itself. These comments are necessarily preliminary, in view of the brief time available for analysis of the issues raised.

1. Mandatory divestiture has not been thought through. Section 1 of the proposal would require utilities (other than municipal electric districts and REA cooperatives) to divest themselves of their generating functions. Divestiture is an extraordinarily complex and costly remedy, and poses a very significant risk of leaving consumers much worse off than they are today. Among the questions which should receive careful consideration before adopting this radical approach are the following:

* Would the proceeds of any sale of assets be available to reduce otherwise stranded costs, or would they become the property of the utilities' bond trustees under the terms of their indentures?
* What will the tax consequences of divestiture be?
* How can the state insure that forced divestiture does not result in the assets being sold at depressed values?
* Would anyone truly be willing to buy nuclear assets today, given the future uncertainties regarding decommissioning and waste disposal liability?
* Is Maine truly willing to give up the benefits of its low cost hydro and nuclear power?
* What level of administrative, legal, transactional and other costs will be incurred in undergoing divestiture?
* How will jointly owned assets be treated?
* What about Maine utilities' interests in plants located elsewhere?
* How will Maine utilities fulfill their wholesale power obligations?
* Who will administer the NUG contracts?
* What will happen to contract terms that are tied to CMP retail rates and other current operations?
* What will be the impact on the cost of electricity that will result from the additional capacity likely to be introduced into the market as generation becomes more competitive?

In addition to these questions, the provision exempting municipal electric districts and REA cooperatives makes no sense. Exempting those entities would increase the incentives for formation of new munis and coops to gain competitive advantages over utilities subject to the proposal's requirements.

The proposal also doesn't address the issue of whether the state's mini-PURPA law should be repealed. It is difficult to imagine why it shouldn't, since requiring utilities to buy power from NUGs is inconsistent with getting utilities out of the generation business. Yet at the December 1 Work Group meeting, the representative of the IECG sought to garner the group's support for a letter to Congressman Schaefer opposing PURPA repeal.

2. "Enhanced consumer protection" is unjustified. Section 2(b)'s assertion that "effective provisions must be established to ensure against anti-competitive behavior" is unproven. As became clear during the presentation by Steven Wessler from the Attorney General's office, existing antitrust enforcement tools and resources may be sufficient, depending on the structure of the industry which emerges from the proposal.

CMP does not believe that encouragement is needed for the formation of brokers, marketers and customer aggregators. The market as already taking care of ensuring that there will be plenty of such interests. We would note, however, that these entities provide an additional level of participants in the market whose need for profitability will add to the cost of electricity.

3. Divestiture of transmission may be unwise. CMP has serious reservations about divestiture of transmission, as contemplated in 3(c). Our analysis to date raises questions as to whether a divested transmission entity would have sufficient assets to be economic as a stand-alone entity. Given FERC's apparent inclination to require functional separation, divestiture seems unnecessary. In addition, there are very serious unresolved questions as to how to determine whether particular assets are transmission or distribution related.

4. New costs on the distribution system would be substantial. The discussions at the Work Group meeting revealed that the provision in Section 4 for charges of up to 5 mills per kwh for social and environmental programs as well as regulatory assessments for the MPUC and OPA would translate to $50 to $60 million per year in costs to Maine consumers of electricity. CMP does not believe that it is prudent to impose so large a burden on consumers, especially with the hundreds of millions of dollars costs from prior programs (e.g., PURPA, DSM programs) still remaining to be recovered. Nor would it be reasonable to require the distribution companies to incur these kinds of costs without assurance that the state will honor its obligation to permit recovery of costs already incurred.

Section 4(e) says that the distribution companies will implement least cost *distribution* system planning and investment, "incorporating existing precedent." We are not aware of any such precedent at the distribution level. There is a very

small amount of precedent in transmission planning; but even there, uncertainties remain since transmission is so often built for reliability purposes rather than to serve load. Regulatory supervision of distribution investment would be unwieldy, given the magnitude of small distribution investments which must be made on an ongoing basis, and the need for the distribution company to respond to customer needs for distribution enhancements on a timely basis.

The provision in Section 4(f) for costs to be collected on a usage sensitive basis requires further examination. Putting costs totally on a usage sensitive basis invites customers to seek to bypass costs by reducing purchases from the distribution company (e.g., by fuel switching, self generation, relocation). The result is an ever-dwindling base of sales on which to collect the costs, producing the same kinds of upward rate pressure which existed in the early 1990s, to the dissatisfaction of Maine consumers generally.

Also significant in Section 4 is the omission of any reference to whether the distribution company will be permitted to engage in retail marketing or other services.

5. More analysis is needed on the form and timing of retail access. Without further analysis, CMP does not know whether it would be administratively feasible to begin full retail competition for all retail customers by January 1, 2000. Some form of phase in might be required.

It is also unclear whether retail access in the form of bilateral access is desirable. As we said in the Work Group meetings, it is doubtful that individual customers can negotiate contracts which obtain power less expensively than the utilities do today (leaving PURPA aside); nor is there reason to believe that the overall system would operate more efficiently than it does under the economic dispatch procedures of the New England Power Pool.

The provision for standard service may be unworkable. It requires that standard service be available at a cost no higher than the existing service; yet there is no reason to believe that potential suppliers would submit bids which make that possible, especially given the risks the standard supplier will assume.

The provision in section 5 (f) barring exit fees is highly inappropriate, given that exit fees were recently upheld in Massachusetts, and the issue is likely to come before the MPUC very shortly. The absence of exit fees creates incentives to bypass system costs, which is unfair to customers without bypass opportunities. Those customers tend to be the residential and small business users of electricity.

6. The plan does not ensure system reliability. Much of Section 6 either reflects current law, or changes already under consideration either in NEPOOL or at the FERC. One novel provision, however, is the requirement in Section 6 (b) that the Independent System Operator (ISO) be wholly independent form energy providers, and be governed by representatives of electricity consumers. Operation of the transmission grid requires highly specialized expertise to ensure reliability, and there would be considerable risks is effectively freezing

out the parties who today possess most of that expertise. If the concern is ensuring fairness, then perhaps the proposals currently under consideration in the RTG negotiations, under which all interest groups have voting power, make more sense.

The provision for the ISO to operate and ensure reliability of the transmission system could introduce large inefficiencies. The transmission grid is spread out over thousands of square miles. Today, problem areas can be reached relatively quickly from the existing network of service facilities; a new ISO might have to duplicate much of that network, at a very high cost, to replicate existing service levels.

Section 6(e) appears to reflect continued misunderstanding regarding the interdependency of the electrical grid. Reliability is to a large extent a system-wide phenomenon. Because electrons flow according the laws of physics, and do not follow contract paths, individual customers can only accept different levels of reliability without affecting other customers under very limited circumstances.

Finally, Section 6 provides no mechanism for accountability if the ISO fails to maintain adequate reliability.

7. The critical issue of stranded costs is left unresolved. Section 7 is one of the most troubling aspects of the proposal. It properly focuses on the desirability of there being net benefits from restructuring, but doesn't say how "benefits" are to be defined or achieved. If "benefits" means net savings to society, in terms of lower overall costs, than CMP would agree with the test being put forward. However, the proposal contemplates *adding* new costs to the system, without any indication of where offsetting cost savings will occur. If the proposal contemplates that the mere *shifting* of costs from one set of parties to another, e.g., from ratepayers to shareholders of the utilities, will be considered a benefit, then the plan is unrealistic and probably illegal.

Attempting to transfer significant costs from consumers to shareholders is unrealistic because Maine's utilities are already in a financially weakened condition. They do not have the resources to withstand further losses without seriously threatening their ability to maintain the infrastructure on which reliable electric service depends. As the utilities have shown, just to meet currently outstanding obligations (from NUG contracts and otherwise) will require sums on the order of four times the entire equity of the utilities.

As to the legality of attempting to shift costs to shareholders, utilities have a right under the Fifth Amendment to a reasonable opportunity to recover their prudently incurred costs. The Supreme Court has recently reaffirmed that right, holding that regulators are not free arbitrarily to switch from one method of regulation to another, leaving utilities without a fair opportunity to recover their costs.[1] The teaching of that and earlier cases applies with added force to costs incurred under legal mandates, such as NUG contract costs.

[1] Duquesne Light & Power Co. v. Barasch, 488 U.S. 299, 309 (1989). This is not a case where changes in market conditions make it impossible for the utility to recover its investment.

Leaving the amount of stranded costs to be recovered unresolved is a glaring inadequacy of the proposal. Stranded cost recovery has been recognized from the outset of the Work Group discussions as a critical issue. Without its resolution, there is no way of meaningfully evaluating the plan. It leaves up in the air such fundamental questions as whether the distribution companies which emerge from the proposal will have the capital and credit quality to maintain the infrastructure; how the NUG commitments will be paid; what the cumulative impact of the social and economic program costs will be on consumers; whether investors will have sufficient confidence in the fairness of Maine regulation to commit further capital in the Maine market; whether the whole proposal will be tied up in the courts as its legality is tested; and whether Maine's utilities are likely to become takeover targets by out-of-state entities.

Another deficiency of the proposal is its omission of any reference to so-called regulatory assets, such as deferred taxes and amounts owing to pay back certain investments previously found to be prudent. One of these regulatory assets should be of particular concern to the legislature: that is the amount owning on the buyout by CMP of the Fort Fairfield NUG contract. CMP financed that buyout with FAME bonds, under the terms of the Electric Rate Stabilization Act; failure to ensure that CMP recovers from customers the amounts needed to repay those bonds could put the state in the position of having to assume responsibility for them[2].

The proposal is also unreasonably discriminatory in providing full stranded cost recovery to investors in NUG contracts (section 7(f)), while withholding than protection from investors in utility-built generation.

8. The MPUC may not be the best forum to resolve billing disputes. We have already commented on the issue of enhanced consumer protection activities which appears in section 8 (d) (see discussion at item 2, above). It is unclear whether the PUC will have adequate resources or expertise to oversee billing disputes between the distribution companies and energy suppliers. It might be preferable, for example, to allow those parties to use arbitration if they so choose.

9. The policy issue on low income subsidies is not addressed. There has been considerable discussion in the Work Group regarding that desirability of having low income subsidies addressed through the appropriations process rather than utility rates. This proposal dodges the issue. While we recognize that low income subsidies is a politically sensitive issue, this would appear to be the time to raise it.

Compare Market Street Ry. v. Railroad Comm'n, 324 U.S. 548 (1945). The risk currently faced by utilities is a direct result of a threatened change in regulation, i.e., the introduction of retail competition.

[2] Bangor Hydro has even larger outstanding obligations under FAME backed bonds for NUG contract buyouts.

Section 9(b) contemplates regulated least cost planning for distribution companies, a point we have already addressed (see item 2). In short, this form of regulation appears entirely unworkable for the multitude of small distribution investments which must be made on a continuing basis to ensure distribution reliability and customer service.

10. The proposal reintroduces PURPA-style incentives. Section 10 apparently would reintroduce PURPA-style incentives for renewable resources. The legacy of the past decade of PURPA projects should be enough to convince us that this form of subsidy is fraught with potential consumer harm. Interestingly, the Rhode Island PUC recently rejected a comparable provision which the Conservation Law Foundation sought to have included in the principles for restructuring in that state, on the ground that subsidization of renewables was inconsistent with a deregulated generation market.

11. The proposal could force a shutdown of Wyman Station. As we mentioned at the December 1, 1995 Work Group meeting, according to our initial assessment the cost of meeting the New Source Performance Standards for Wyman Station in Yarmouth as required by section 11 would be on the order of $50 million. Whether Wyman would stay open under those circumstances is doubtful; if not, the impact on Yarmouth property tax payers would be considerable. If Wyman did remain open, the burden of these additional costs on consumers could far outweigh any resulting environmental benefits.

12. Provisions for MPUC action lack specificity. While the goals of Section 12 are reasonable, we do not know at this point whether the MPUC wants the responsibility for disseminating information to the marketplace. In addition, it is not evident how the MPUC would translate its monitoring of reliability and diversity into meaningful action.

CONCLUSION

The frustration of some members of the Work Group over not reaching consensus on a detailed plan is understandable. However, the experience of other jurisdictions confirms that restructuring is a highly complicated subject, which should not be rushed. In California, for example, even with vastly more resources than are available in Maine the process has taken over two years. With the MPUC prepared to devote a full year to addressing this subject, and no immediate need to begin implementation of a plan, there is no good reason to endorse a proposal which raises so many questions and presents so many risks.

In taking this position, CMP has been accused of attempting to delay retail competition. That is an entirely unfair and unwarranted charge. CMP participated actively in the development of the legislation which called for this study; it has devoted considerable internal resources to the issues; it has

participated constructively in the Work Group discussions; and it is planning to have a detailed proposal ready for dissemination by the end of January, in time for full consideration in the MPUC process. We believe our conduct is ample evidence of our commitment to ensure timely compliance with the legislative resolve.

In sum, CMP urges the Work Group to withhold approval of the pending proposal, and allow it instead to be considered along side alternative proposals to be submitted to the MPUC in the near future.

Dirigo Electric Cooperative concerns about "Paradigm" Proposal

1. The exemption of consumer-owned utilities may not be feasible in terms of consumer choice: will it be possible to deny customers of these utilities the right to choose?

2. Divestiture exceeds the appropriate exercise of government power. Unbundling may be sufficient; divestiture may take place as a voluntary act.

3. The wires charge can be a burden to a distribution utility, turning it into a tax collector. Certain charges which are proposed to be collected may be objectionable.

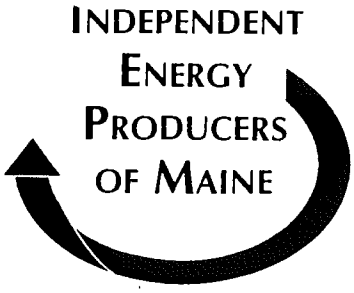
4. Low-income energy assistance should be taxpayer financed and the Legislature should be asked to consider.

5. Stranded costs should explicitly include regulatory assets.

6. The provisions relating to the collection of generating costs are unclear making it appear possible that the distribution utility would not be able to recover from customers costs that had already been paid.

7. The environmental equivalency requirement will cause generation costs to increase.

8. The proposal addresses transmission and ISO issues which are outside of state control and should not be included in the plan.



December 12, 1995

TO: Members of the Work Group on Electric Industry Restructuring

FROM: Julie Rowe

RE: Comments on the "Paradigm"

Enclosed are IEPM's comments on the restructuring proposal presented at the last meeting of the Work Group.

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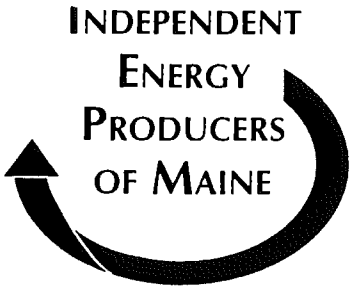

IEPM is pleased to submit the following comments on the restructuring outline put forward by an ad hoc subset of the Work Group on Electric Industry Restructuring. Having participated in the ad hoc group's meetings, we know that a significant amount of time and effort went into the outline's development. It represents a sincere effort to to put a model on the table for discussion and debate among the Work Group.

We acknowledge that the outline does not address every last detail that must be considered in the restructuring debate. The time frame under which the Work Group was operating did not permit the ad hoc group to delve into the level of detail that might have uncovered potential flaws (or, perhaps, omissions) in the paradigm. For that reason, as the document's preamble indicates, we who participated in its development view it as a "living document" that may evolve as issues are more fully discussed and explored by all electric industry stakeholders during each phase of the restructuring process. As we all learn more, through constructive discussions with the many participants in this complex debate, it is likely that our recommendations will be further refined. That, we suggest, is one of the primary functions of the upcoming PUC proceeding.

For IEPM, as for each individual member of the Work Group, certain elements of the outline bear greater significance than others. In our comments, then, we will amplify our support for certain concepts contained in the outline and will indicate areas where our position may evolve or where our support is of a qualified nature.

By way of introduction, I would note that during the course of the Work Group's discussions, IEPM often sounded the following two themes: 1) That divestiture represents the best means of ensuring a level playing field for all competitors in the generation sector, the best protection against market power abuses by vertically integrated utilities, and the most effective way to mitigate the magnitude of stranded investment; and 2) that the definition and ultimate calculation of strandable costs was a task more appropriate to the PUC than the Work Group. Our support of the paradigm is consistent with both those themes.

DIVESTITURE

Based on early reactions to the outline, it is clear that divestiture of generation will be a focus of considerable debate. IEPM would like to make it clear that when we

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advocate divestiture, we are not suggesting a forced "firesale" of utility generation assets. On the contrary, in recognition of the need to maintain the financial stability of regulated utilities, we advise that divestiture be managed so that utilities find the spin-off or sale of assets to be financially rewarding. That said, however, we stand behind our call for divestiture of generation from transmission and distribution for the following reasons:

Today's electric utilities possess and exercise significant market power in all electric markets. Among other things, this power takes the form of barriers to entry and unfair preferences that competitors must overcome. Divestiture would eradicate the single largest obstacle to achieving a robustly competitive electric power industry -- the incentives of vertically integrated utilities to exercise their transmission market power to favor their own generation and their own sales service over competing power providers.

As we have argued previously, adequate mitigation by utilities of strandable costs can be complicated and difficult to prove. Divestiture of utility generating assets provide the most simple and effective mitigation possible.

Further, by providing an objective market measure of the extent to which sunk utility investments exceed market values, divestiture would eliminate the need to guess at, or track over time, the market value of utility investments. Indeed, divestiture would bring closure to the stranded cost issue, which otherwise might remain an open-ended obstacle to an orderly transition to competition.

In the absence of divestiture, the temptation for, and suspicions about, self-dealing and unfair competition will be overwhelming. As a result, the failure to divest will necessitate the adoption of strong affiliate transaction rules to protect against the possibility of anti-competitive abuses, such as cross-subsidization and self-dealing among affiliates; pricing by unregulated affiliates designed to use regulated affiliates as revenue sources; and barriers to access to essential transmission and distribution services. Thus, utilities who choose to compete in the generation sector will be subject to substantially closer scrutiny and higher levels of "command and control" regulation than would be the case if they chose to divest.

Assistant Attorney General Stephen Wessler, in his recent remarks to the Work Group, made it clear that existing antitrust protections would be of little use if the electric industry was restructured in an anti-competitive fashion. If we fail to ensure that the new industry structure promotes full and fair competition, "on day one" we will find ourselves with great potential for anti-competitive abuses and little or no recourse to address that abuse. That admonition by Mr. Wessler is being taken very seriously by the members of IEPM, who seek a level playing field in a restructured electric industry.

RESPECT FOR EXISTING CONTRACTUAL OBLIGATIONS

The fulfillment of long-term power purchase agreements plays a significant role in the continued development of a competitive electric industry. Contractual obligations of the past must be respected to ensure that competitive markets of the future will operate effectively and that participants will continue to have access to capital on reasonable terms.

Since the working draft of the paradigm was distributed, IEPM has further reflected on section 7f. Consultation with several other members of the ad hoc group produced the following suggested change to this section:

> "In the restructuring and thereafter, the rights and obligations of contracts between electric utilities and other parties, such as those with bondholders, energy resource providers and others, will be respected, and shall not be subject to abrogation, modification or diminishment on an involuntary or unilateral basis."

RENEWABLE RESOURCES AND ENERGY SECURITY

IEPM wishes to highlight two other elements of the outline, Section 10a(ii), relating to renewable energy resources, and Section 12c, which speaks to the issue of energy security. These two sections are, we would argue, inextricably intertwined, and critical to the long-term best interests of Maine citizens. We urge the Commission, in its deliberations, to reaffirm the wisdom of the Maine Energy Policy Act, which "finds that it is necessary to diversify energy producing systems and energy sources to ensure an adequate and reliable supply of energy for Maine citizens," and that Maine should "encourage the development of energy producing systems using renewable resources; particularly abundant, indigenous renewable resources or resources in close proximity to Maine."

Maintaining a diversity of energy resources -- in terms of size, location, age and fuel type -- is essential to ensuring Maine's long-term energy security. We recognize that reconciling this need for diversity with the competitive forces that will drive Maine's electric industry will be a challenging task for the PUC. We nevertheless believe it is incumbent upon the Commission to consider the value of such diversity as Maine's energy "insurance policy." Over the long term, increased use of renewable energy technologies will have significant environmental, economic and security benefits.

IEPM appreciates the opportunity to offer these comments. We look forward to continued dialogue about the paradigm and other restructuring proposals as we move toward the next phase of this comprehensive look at restructuring the electric industry.

HOUSE OF REPRESENTATIVES
STATE HOUSE AUGUSTA 04333-0002
287-1400

Rep. Carol A. Kontos
P.O. Box 1785
Windham, Maine 04062
Tel: 207-892-3474

December 11, 1995

The following represents my comments about the "paradigm" offered on December 1, 1995, for review by the Work Group on Electric Utility Restructuring. These remarks are intended also to identify implications for other public policy decisions that may not necessarily fall within the PUC's jurisdiction.

1. Although the Work Group had not previously endorsed mandated divestiture of generation assets, this proposal does provide a methodology for determining market values (through auction) of these assets. Because I am mindful of the objections of the utilities, including those of Maine Yankee, might a compromise position be to encourage voluntary divestiture to be completed fully by the scheduled decommissioning of Maine Yankee in 2008?

I am convinced that generation assets must be "unbundled" from the distribution company for true open competition to take place. If we agree that a free market produces more accurate and honest pricing than a regulated monopoly, then we cannot ignore fundamental market principles that such divestiture would ensure.

2. Providing for low-income energy subsidies will be a priority for most legislators, particularly when debated in the context of apparent reductions in the federal LiHEAP funds. I suggest that the Maine State Housing Authority, in cooperation with the State Planning Office, convene a group of stakeholders with interests in energy issues to review funding for low-income energy programs, regardless of energy type. I am not convinced that either a wires charge or a general fund appropriation will be a politically successful method of funding low-income programs. The Legislature must be able to defend a program developed with the right principles and funded properly.

3. Our Work Group has not fully analyzed the extent to which changes, if any, need to be made to tax policies as states begin the transition to utility deregulation. I suggest that the Director of the Bureau of Taxation be prepared to offer recommendations to the Joint Standing Committee on Taxation about any changes in state policy deemed necessary to make deregulated utilities consistent with other competitive businesses.

4. The "paradigm" offers a framework for responding to likely changes in air emissions across the region and the country. Maine's Department of Environmental Protection

should continue to monitor federal actions that may affect air quality in New England. The region's compliance with the Clean Air Act ought not be jeopardized by utility deregulation.

5. I urge Maine's representatives to the Coalition of New England Governors (CONEG) to continue to work on regional agreements regarding retail wheeling. If we have learned anything from the CARTEST experience, it is that Maine ought not be too hasty in adopting retail wheeling if doing so puts some Maine ratepayers at a disadvantage.

6. The Antitrust Division of the Attorney General's Office must keep informed of any changes in federal law and any implications for the states regarding anti-competitive practices that may relate to utility deregulation. The Attorney General's staff should consult with PUC staff, the Public Advocate, and the Joint Standing Committee on Judicial Affairs to determine the extent to which statutory changes and / or additional appropriations for their office might be necessary.

7. While some members of the Work Group have indicated that it may not be possible to guarantee cost benefits to all customers after deregulation, I believe such assurances will be necessary to gain the support of a majority of legislators. In fact, given the complex nature of a restructuring proposal, many legislators undoubtedly will focus on the effects of deregulation on particular customers, e.g. industrial customers, commercial ratepayers, or, as previously mentioned, low-income customers. Absent these assurances, I do not believe a restructuring plan will succeed politically.

In closing, the "paradigm" serves as a useful proposal to be referred to during the formal inquiry at the PUC -- and I'm grateful for the efforts of those who prepared it and those who commented on it. When considered with the worksheets outlining the functional responsibilities of a restructured utility industry, the "paradigm" has been a helpful part of the process.

Sincerely,

Carol Kontos

Carol A. Kontos
State Representative

ELECTRIC POWER

MAINE PUBLIC SERVICE COMPANY

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STEPHEN A. JOHNSON
VICE PRESIDENT, CUSTOMER SERVICE
AND GENERAL COUNSEL

December 6, 1995

To: Chairperson Kontos and All Members of the Electric Utility Industry Restructuring Work Group

From: Stephen A. Johnson
Maine Public Service Company

The following are MPS's comments on the December 1 "Paradigm" presented to the Group by Steve Ward, et als. All references to "Items" follow the December 1 "Paradigm".

Item 1.a. Generation should be divested to ensure against anti-competitive behavior.

It appears the intent of this proposal is to mandate the forced sale or transfer of all utility-owned generation. If so, MPS has several serious problems with this section.

(1) A Forced Sale of Generation is not Necessary to Ensure Against Anti-competitive Behavior. The authors of this proposal are assuming that if the utility owns both generation and distribution assets, it will somehow use its direct access to customers via the distribution system to force those customers to buy its own generation. Steve Wechsler from the AG's Office indicated to the Group on December 1 that this type of vertical integration could pose possible anti-trust or anti-competitive risks in a totally unregulated environment. The important point, however, is that the electric utility industry will not be wholly unregulated. Even under the most ambitious restructuring proposals, the utility distribution system (disco) remains a monopoly regulated by the MPUC (E.g. item 4(a) of the December 1 "Paradigm"). As an incident of this regulation, the MPUC will or should have the ability to ensure (1) that the disco does not prevent the free access to its system by those who wish to sell and those who wish to buy energy and (2) that the disco does not abuse its distribution monopoly by unduly influencing its customers to accept sales of its own generation.[1] The MPUC has the authority to police the disco either on its own initiative

[1] Anyone who doubts the MPUC's continued regulation of the disco is advised to recall my discussion with Chairman Welch concerning the MPUC's control of the disco's disconnection and collection policies.

(unlike a court) or upon petition by any 10 persons "aggrieved" by the utility's practices (thus, giving customers a forum for their grievances without the expense associated with traditional anti-trust lawsuits). Similar observations can be made about the FERC's continuing jurisdiction over the transmission system (transco).

In light of the MPUC's authority over the disco and FERC's over the transco, the forced divestiture of utility generation makes sense only if there are compelling public benefits resulting from the sale. In fact, no such benefits exist and a forced sale may, in fact, actually disadvantage the public.

(2) Utility Customers May not Receive the Proceeds from the Sale. MPS currently has outstanding approximately $38,000,000 in indebtedness. Under the terms of the Company's indentures, all proceeds, up to this amount, from the sale of generation assets would have to be deposited with the Indenture Trustee and are used to redeem the Company's indebtedness. Thus, the direct beneficiaries of the sale are the Company's bondholders and not its customers.

(3) The Forced Sale Would Risk Losing the Market Value of the Tinker Facility. The Company owns a 34 MW hydro facility located in the Province of New Brunswick, Canada. This facility has a book value of only approximately $4,100,000 (U.S.). Because the unit produces power at an average cost of approximately 2¢ (U.S.) per kwh, its actual market value is several times its book value (just one year's revenues from sale of power from the plant at today's market is more than the current book and the plant has a useful life of between 30 and 50 years). The threat of a forced sale of this facility could provoke the New Brunswick Power Commission to expropriate the facility and reimburse MPS in an amount based only upon book. In 1962, New Brunswick expropriated the Company's entire transmission and distribution system in the Province and paid MPS an amount of compensation that was only 20% above book value.

(4) The Forced Sale Would not Relieve Customers of High Cost Power. MPS currently purchases 18 MW of power from the Wheelabrator-Sherman Energy Company (W/S), a NUG. The current rate from this power is 11.75¢ per kwh, rising to 14.75¢ per kwh in 2000. This pricing is greatly in excess of current, and expected, market prices for power. If, for example, MPS sold its W/S contract for 5¢ a kwh, it would still be obligated to honor the current contract and pay the difference. (See item 7(f) of the "Paradigm"). Legally, these costs cannot be imposed on MPS or its shareholders. MPS's customers would therefore continue to pay the difference between 5¢ a kwh and the contract price even though they were receiving no power from W/S. In addition, these customers would also have to pay the cost of whatever power they were receiving.

A similar result holds true for Maine Yankee which, under the "Paradigm" would be sold, thereby depriving the Company's customers of

inexpensive, efficient power, while saddling them with the decommissioning costs of the plant (see item 2(c) of the "Paradigm").

(5) The Forced Sale Could Impose Compensatory Costs on the State of Maine. The Company's generating facilities are a substantial part of the collateral supplied the Company's lenders under its indentures. If the sale did not realize an amount equal to the Company's outstanding indebtedness (a possible result given the "fire sale" nature of a mandatory divestiture), the value of that collateral would be impaired. Because this security interest is a property right, the Company's lenders may have the right to require the State of Maine (who required the sale) to make whole that impairment.

(6) Forced Sale of Generation will Increase the Cost of Electricity for MPS's Customers. Due to its northern location, MPS's system is heavily winter peaking - that is, its winter load is about 30% higher than its summer load. As a result, MPS has had excess generating capacity for sale during the non-winter season, when other New England utilities need this power. Between 1988 and 1994, MPS was able to make seasonal sales of the output of its generation (which is not the same thing as an outright sale of the facility) for approximately $13 million, all of which was passed on to the Company's customers. During this same period, MPS's average rate increased by only approximately 1% per year, well below that of other utilities and the rate of inflation. The primary factor in minimizing these rate increases was the seasonal sale of the energy from the Company's generation resources. If the Company is required to sell its generation outright, the Company's customers would no longer receive the benefit of the revenues from these seasonal energy sales. This, contrary to the "Paradigm's" intent, would increase the cost of electricity to MPS's customers.

Item 4(d). [Distribution Company] Collects Funds from all Customers to Support [Certain Specified Functions].

Item 4(d) ii-v specifies a number of social programs that will be imposed upon the disco, with the cost to be collected from the disco's customers. Encumbering the disco with these programs makes the purchase of electricity economically less effective than some other options, such as self-generation. Thus, this section is itself anti-competitive, since it provides certain of the utility's competition with an economic advantage in the market place.

Item 5(a). All Customers will be able to Negotiate for Direct Retail Access to any Energy Supplier Registered to Conduct Business in Maine.

This item fails to account for the fact that MPS is not directly interconnected with the rest of Maine or New England. MPS's only direct interconnection is with the Province of New Brunswick and transmission through New Brunswick is regulated by neither the MPUC or the FERC. Thus, the "Paradigm" fails to explain how customers in MPS's service territory can get access to any energy supplier doing business in Maine

unless New Brunswick is willing to transmit that energy and provide the ancillary services required to support that transmission - an act that no U.S. agency can compel it to do.

Item 5 (f). Customers Shall be Able to Connect with the Electric Grid without Payment of an "Exit Fee" Unless Otherwise Provided by Contract.

The ability to reconnect to the Company's system is of considerable value because it gives the departing customer a fall-back position should its experience in the open market prove disappointing. This places the customer in a no-lose situation. MPS does not object to providing this service, but, because this service is of value to the customer, does not believe it should be provided without charge. The essence of a free market, after all, is the free exchange of values.

Item 6. Required Grid Operation and Management.

Neither the Maine Legislature nor the MPUC can mandate the structure or function of the required grid. This item does not belong in the "Paradigm".

Item 7. Stranded Asset Recovery and Equitable Sharing of the Benefits of Restructuring.

(1) This item fails to specify the nature of stranded investment recovery. This item, in paragraph c, states that "the magnitude of restructuring costs ... will depend on the ultimate structure of the electric utility industry ..." Paragraph d states that the benefits of restructuring "shall be apportioned equitably, on a negotiated basis, between ratepayers and utilities." There are two problems with the proposal's inability to specify the recovery of stranded investment. First, it appears likely that the authors of this proposal intend to place some as yet undetermined portion of stranded investment on the Company's shareholders. For reasons that have been explained by the utilities in various work sessions, placing on the utility's shareholders costs prudently incurred under a prior regulatory regime is neither equitable nor legal. Secondly, until the issue of stranded investment recovery is resolved, the costs and benefits of restructuring remain unknown. Notwithstanding this self-evident fact, item 7(a) states that restructuring "requires an understanding that the benefits of restructuring will exceed the costs of restructuring". This is undoubtedly true but by deferring stranded cost recovery (which is central to a determination of these costs and benefits), the supporters of this "Paradigm" have it exactly backwards. Until the nature of this recovery is determined, the costs and benefits cannot be measured.

(2) Item 7 does not envision the recovery of stranded regulatory assets. Item 7(c) limits its discussion of stranded investment to "generation ownership" and "power contracts". In an earlier work session of this group, MPS identified two major elements of its own

potential stranded investment. These were (1) the W/S Contract with a stranded value of somewhere between $63 and $44 million and (2) the recoverable retail Seabrook costs of $24 million. The "Paradigm" description obviously includes the first of these, but, because Seabrook is a non-productive asset, it does not include the second. Because, however, Seabrook cannot be sold and is, in fact, nothing more than a liability, it is the purest type of stranded investment and its apparent exclusion is incomprehensible to MPS.

Items 10 & 11. Renewable Provisions and Environmental Equivalency. These items have nothing to do with the restructuring of the electric utility industry if the purpose of restructuring is to lower the overall cost of electricity by introducing competition into a previously monopolistic industry. Instead, these issues represent the extraneous concerns of those who give environmental matters overwhelming preeminence in the planning process. These concerns may or may not be legitimate, but they should not be opportunistically inserted into the restructuring process. (To understand how extraneous they are, ask yourself whether any proposal in either item 10 or 11 could be enacted today in the absence of any restructuring. The answer is clearly, yes). Maine Public might wish to amend the tax code to provide a lower corporate tax rate. This would be in MPS's clear interest; it has, however, nothing to do with restructuring and should be promptly dismissed on that basis. If the proponents of this section are unhappy with the Clean Air Act (as enacted in 1970 and amended in 1992) they should return to Congress and not encumber this process with parochial concerns.

Finally, the effect of adopting items 10 & 11 would be to increase the cost of electricity in this State. This result is directly contrary to the purpose of restructuring.

The short of the matter is that the "Paradigm" is beset with so many problems that MPS cannot support it. Moreover, these problems should prevent the "Paradigm" from receiving consensus support. If the parties wish to pursue it before the MPUC in the next phase of this proceeding, they are free to do so, but without the endorsement of this Work Group.

Maine Yankee
RELIABLE ELECTRICITY SINCE 1972

Mary Ann Lynch
General Counsel

December 6, 1995

329 Bath Road
Brunswick, Maine 04011
(207) 798-4100

TO: Utility Restructuring Study Group

FROM: M. A. Lynch MAL

SUBJECT: Restructuring Proposal by the Public Advocate

Maine Yankee has fundamental objections to the Public Advocate's proposal ("the paradigm") as it relates to divestiture of generation assets by utilities engaged in retail sales. Such a requirement would wreck havoc on Maine Yankee's financial and corporate structure and is not warranted given the current structure of the industry. For these reasons, Maine Yankee opposes the current version of the Public Advocate's Plan.

In a free market economy it is generally recognized that divestiture is a truly invasive remedy mandated only in the most extreme of circumstances. The proponents of the paradigm's divestiture proposal have likened the need for divestiture in the electric energy business to the need for divestiture in the telephone industry in the late 1970s. Even a cursory examination of the two industries suggests, however, that the circumstances of the two industries are significantly different and that unlike the telephone industry of 1975, divestiture is unwarranted in the case of the electric industry.

In the case of "Ma Bell" those of us who are old enough can remember when there was essentially one telephone company serving all major markets nationwide. The telephone company provided all telecommunication services, from the equipment in houses and businesses to local and long distance service. There was, for all practical purposes, one nationwide monopoly. Divestiture was necessary, once technology made competition efficient, in order to have other entrants in the market. On the other hand, the electric industry, both the unregulated and the regulated sides, has hundreds of players already. On the regulated side, there are over 200 investor owned electric utilities and hundreds of municipals. On the unregulated side, there are countless players engaged in wholesale sales of electricity as cogenerators or independent power producers. All of this suggests that the electric industry is not at all like the monolithic monopoly that existed in the telephone business by the 1970s. For this reason, Maine Yankee would suggest that the proposal for divestiture is extreme and inappropriate. As the Assistant Attorney General who briefed this Committee on December 1, explained, the state can ensure against anti-competitive behavior through regulation and requirements for fair dealing, a method far more appropriate in the circumstances than divestiture.

In addition to its general concern about the general appropriateness of the proposal to divest, Maine Yankee has several specific concerns as well. Maine Yankee was formed in the late 1960s by a consortium of New England utilities. Maine Yankee's sponsors are as follows:

Central Maine Power Company
New England Power Company
Connecticut Light and Power Company (Northeast Utilities)
Bangor Hydro-Electric Company
Maine Public Service Company
Public Service Company of New Hampshire (Northeast Utilities)
Cambridge Electric Light Company
Montaup Electric Company (Eastern Utilities Associates)
Western Massachusetts Electric Company (Northeast Utilities)
Central Vermont Public Service Corporation

At that time the sponsors purchased shares of Maine Yankee, entered into Power Contracts and Capital Funds Agreements with Maine Yankee, and a Stockholders' Agreement among themselves. The Capital Funds Agreement provides, among other things that when needed, Maine Yankee can call on its shareholders for additional capital. This backup is significant to Maine Yankee bond holders. Divestiture could cause the termination of current corporate and financial structure of Maine Yankee and could have a negative impact in the eyes of the financial rating community. Such negative impact could increase Maine Yankee's costs of capital.

Indeed, should Maine Yankee lose the advantage of its Capital Funds Agreement it might place in jeopardy its ability to finance in the future.

Another reason that the Advocate's proposal is unsound is that it seems counterintuitive to mandate that the decommissioning costs of Maine Yankee remain as a wires charge on Maine retail customers, but that the three Maine owners of Maine Yankee be forced to sell their share of its generating capacity. The result could deny the benefits of Maine Yankee, i.e., low cost electricity to Maine retail customers, but leave them the major financial obligation. The proponents of the plan have offered no principled reason for such an anomalous result.

Divestiture of Maine Yankee by its Maine owners presents other problems for Maine Yankee. When Maine Yankee was first licensed it had to demonstrate to the NRC, pursuant to 10 C.F.R. 50.33(f), that it had reasonable assurance of obtaining the funds necessary to cover the estimated operation costs for the period of the license. Maine Yankee needed to provide information on the legal and financial relationship it has with its stockholders and it needed to provide assurance of its ability to meet any contractual obligation. Finally, Maine Yankee continues to provide financial information regarding its ability to conduct activities authorized by the license, including decommissioning. Obviously, the Power Contract and Capital Funds Agreement with its owners is the basis of Maine Yankee's ability to provide this assurance. Should any of the current financial circumstances change Maine Yankee would be required to submit a license amendment application to the NRC under 50.33 if there were a change in the ownership of the Maine Yankee plant. Even the simplest uncontested license amendments take over a year to process at the NRC and are costly both in terms of putting a license application together and in supporting it through the amendment process. Divestiture would certainly put Maine Yankee's current NRC license at risk, and at a minimum, would require a license amendment.

Finally, proponents of the paradigm have suggested that Maine should be a leader in the move to competition. It does not necessarily follow that being a leader will benefit retail electricity

consumers in Maine. Maine was certainly a leader in the nation in the 1980s when it entered into NUG contracts, an initiative that the Wall Street Journal has, as recently as November 28, 1995, termed "a financial disaster." Maine's electricity consumers are paying dearly for that leadership today. With so much at stake for Maine's economy it makes sense for the State of Maine to tread cautiously where no state has gone before.

For the foregoing reasons Maine Yankee cannot sign on to the Advocate's proposal.

December 1, 1995

A PARADIGM FOR RESTRUCTURING INVESTOR-OWNED ELECTRIC UTILITIES: A NEW INDUSTRY STRUCTURE

A minority consenting opinion By Jim McGregor, Small Business Representative

While I basically embrace most of the concepts and principals contained in the document, I do so with the following caveats:

(1) It must be clear that "benefits" derived from deregulation specifically include lower rates for all utility customers.

(2) It is the strong belief of this member that the scope of stranded investment should be determined prior to final deregulation. This is necessary, I feel, not only to protect the interests of citizens who have invested in utilities over the year; but to protect all utility customers. Since the monetary amount of stranded investment will go a long way in determining what savings will be realized through deregulation, it seems logical that this issue should be addressed prior to a final determination to proceed. The possibility that stranded investment costs could outweigh savings is too great a gamble to impose on consumers.

(3) The auctioning of utility generation facilities should not be the primary factor in establishing a stranded investment figure.

(4) The final report of this work group should not be construed as favoring one source of energy over another.

(5) The report should clearly reflect the group's belief that final deregulation should allow several businesses to aggregate and negotiate with generators or brokers as a unit.

In addition to the stipulations outlined above, this member's support of the paradigm document is predicated upon the line in the preamble which states that: "This plan was formulated with the understanding that the issues and approaches set forth may evolve over time as may the positions of parties."

December 15, 1995

To: Rep. Carol Kontos, Chair, Work Group on Electric Restructuring

From: Jim McGregor, Small Business Representative

Re: Scheduled Task Force Vote

After considerable thought, I have concluded that the Task Force will be unable to arrive at a consensus that would provide the Public Utilities Commission and/or the Maine Legislature with sufficient guidance or direction on the complex issue of electric deregulation. I have attended as many task force meetings as possible and have met with members representing all interests. However, in the final analysis I find it difficult, if not impossible, to embrace any of the overall plans that have been offered and discussed.

It seems the best service this task force could render to bodies that will later wrestle with the issue would be to provide future negotiators with recorded votes on the major questions that have been identified. Short of that, I would request to be recorded as voting for a deregulation concept that includes the following elements.

(1) This member strongly supports deregulation of electric generation, but the issue of stranded investment should be resolved before any restructuring is finalized. As a layperson in this field, I lack the insight to totally visualize what deregulation will bring. If there are forced sales of existing utilities, what guarantee will consumers have that the new owners will produce a quality product and reliable service at lower rates? Also, as a layperson who has long espoused a free enterprise system, I have great difficulty rationalizing the determination of stranded investment through public auction. Likewise, I have not been convinced that a deregulated industry must include the expulsion of existing utilities.

(2) The issue of continued reliability of service and uninterrupted access must be given a top priority.

(3) The alternative for remaining with an existing utility, at least for a specific period, should be included in a restructuring plan, but utility services should be unbundled and available on a non-discriminatory basis to all consumers.

(4) Consumers should be allowed to aggregate their owned and/or operated facilities for the purpose of obtaining more competitive pricing.

(5) While utilities should be relieved of obligations to plan and provide functions being furnished by a competitive market, there should remain in place a commission-like body to constantly monitor distribution, availability of power, access, and future needs of the state and/or region as a whole.

(6) Once the issue of stranded investment is resolved, consumers should not be subject to entrance or exit fees that are not related to the cost of providing a service.

(7) Electricity marketers and third party suppliers should be permitted to act in a merchant capacity on behalf of a consumer or group of consumers.

(8) The universal right of access to affordable electricity must be assured.

(9) It must be clear that "benefits" derived from deregulation specifically include lower rates for all consumers.

(10) Deregulation should not favor one form of electric generation over another.

Respectfully submitted:

Jim McGregor
Small Business Task Force Representative

MEMORANDUM

TO: Electric Industry Restructuring Work Group
c/o Jon Clark
Office of Policy and Legal Analysis
State House Station 13
Augusta, Maine 04333

FROM: Mary Henderson, Low Income Representative

RE: Comments to Paradigm for Restructuring

DATE: December 8, 1995

I agree with the Public Advocate's comments with respect to the paradigm for restructuring presented to the work group last Friday. To those, I add a few more.

The momentum to move toward retail competition created by the legislation giving the Work Group its charge, by the FERC NOPR, by events in other states, and by the competition for large customers that is likely to occur at the conclusion of the ARP, has pushed me to participate in the process developing a full competition model. This is not because I am convinced that competition is the best thing for low income consumers, but because if it is going to happen, we need to be sure that more people are not put at risk of losing this essential service in the process.

Fundamentally, retail competition should not occur unless the consumer protections with respect to anti-trust activity, marketing, connect and disconnect procedures (including reasonable payment arrangement requirements), and low income programs are in place. In addition, retail competition should not occur unless all classes of customers, particularly small residential customers, will benefit from lower prices. This means that those customers who cannot or do not wish to shop for their energy supplier, must have the benefit of lower market prices. Because the paradigm seems to be the most likely model to meet these criteria, I support it.

So far, I have not been convinced that there will be benefits for residential customers by having a choice of suppliers. As long as household lights and appliances work reliably as they do today, there is little reason to shop other than price. It is not like shopping for other products -- the electrons will be the same regardless of the supplier. If prices are not going to drop for residential customers as a result of competition, competition should not be introduced.

Setting up a bid process for suppliers to provide service to customers who do not want to or cannot shop for service is key to assuring that the benefit of lower market prices are extended to all consumers. It is also essential that the suppliers who win

the bid be obligated to provide the "standard" service to customers who are unable to obtain service elsewhere, for example, due to bad debt. This should not be a burden to the supplier or the market if those without sufficient income to pay their essential bills are sufficiently subsidized. In addition, I expect that those who face such difficulty are likely to be a tiny portion of the default customers. It is my understanding from the National Consumer Law Center that when the gas industry in California was deregulated, for example, 97% of those customers who could have switched suppliers, didn't.

Adequately subsidizing low income customers to assure that they are able to obtain this essential service is essential. Absent another method, in place and raising adequate revenue, the wires charge must be in place to assure this result.

There are many reasons for subsidizing certain needs -- to protect utility stockholders from expensive stranded costs, to assure clean air, to assure staff is available to protect against anticompetitive practices, or to assure electricity for low income families. All are different but compelling needs. There may be better ways of funding them than a wires charge; but unless another method of adequate funding is assured or unless one believes that the need should go unmet, it would be irresponsible to fail to address the need within the restructuring proposal.

The argument that the subsidy is "hidden" and not subject to legislative review is a red herring. The low income subsidy will be no more "hidden" than most tax expenditures and certainly no different than the one that will be in place (at some level) to assist utility stock holders with stranded costs. Further, it was just recently reviewed by the legislature. Surely, if discussions within the Work Group have been any indication, it is sure to be debated again -- probably at a level out of proportion to its $ 5.5 million role in the restructuring process.

Within the Work Group there seemed to be unanimous agreement that low income customers, whether they are disabled, elderly, children, or those laboring in the low wage, part time, insecure, low benefit job market, should not be denied electric service. To paraphrase Senator Harriman, no one wants to see families put in harm's way.

The only question, therefore, is how to pay for it. That question was answered by the 117th Legislature. In the first regular session, the Legislature specifically rejected a bill that began as a proposal to eliminate the low income programs, and that was amended to instruct the PUC to devise a plan to phase them out. The proponents of the bill argued, as some Work Group members argue now, that the program is a "welfare" program belonging in the general fund. That argument was rejected by the

full Legislature just last spring.

In addition, the 117th Legislature made a specific decision to reduce direct government services, not to add them. Specifically, the Legislature decided to cap spending at the level of 1997 revenues, precluding possibilities for raising additional revenues for programs such as this for the general fund.

With the revenue cap, we can anticipate a significant further decline in state government services -- the only way to replace the federal revenue the state will soon lose, to keep pace with inflation (particularly health care cost inflation) or to attempt to meet increased needs in the event of an economic down turn, will be to sharply cut services. Either those service needs will go unmet or they will be shifted to the property taxpayer. Neither of those options is acceptable with respect to providing essential electrical service.

In short, the legislature has already sent a clear message that the electricity programs for low income people must remain in place, and that they should be funded from within the context of the electric utility industry. Under these circumstances, failing to raise the revenue in the context of moving toward restructuring would irresponsibly put lives at risk -- a result no member of the Work Group desires.

Comments of the Public Advocate: "A Paradigm for Restructuring Investor-Owned Electric Utilities"

This letter provides the comments of the Public Advocate in qualified support of the Paradigm for electric-utility restructuring that was presented and discussed at the Work Group's December 1 meeting.[1]

The Paradigm is a good faith (if imperfect) attempt at identifying the key components of structural change in the electric industry that must be made if there is to be a prospect of securing both (a) retail choice for electricity consumers and (b) a realistic possibility of lower prices for all customers. It has resulted from a rapid process of consultation and negotiation among most, but not all, of the Work Group members who do not directly represent utility interests. Due to the difficulty of designing workable proposals, as well as the daunting complexity of the subject matter, the Paradigm begins with a disclaimer, stating in part:

> This plan was formulated with the understanding that the issues and approaches set forth may evolve over time as may the positions of the parties [who have collaborated in its preparation].

Such a disclaimer is a necessity in view of the tight timeframes under which the Work Group is expected to operate. There is, of course, an important role for the PUC, during the year-long proceeding envisioned by Resolve No. 48, in resolving any issues that may be left open in the Paradigm - inadvertently or otherwise - and in improving on its fundamental structure.

In brief, the Paradigm proposes the fundamental reorganization of Maine's electric utilities in order to enable retail customers by the year 2000 to choose their energy suppliers and shop for power. As such the Paradigm fulfills the requirements in Resolve No. 48 for achieving "full retail market competition for purchases and sales of electric energy by the year 2000". It therefore provides an ample opportunity for development of the second (and less deregulatory) plan contemplated by the same Resolve: a plan permitting retail market competition "wherever effective competition is likely [but which]... maintain[s] appropriate regulation in areas where it is determined to be necessary". By furnishing the PUC with a plan proposing "full" market competition, we have reduced the

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[1]These comments in no way represent the views of the Governor or his senior advisers.

likelihood that other plans that are more destabilizing, or that are more likely to threaten the survival of existing utilities or the legitimate interests of their shareholders, will receive serious consideration at the PUC.

Our plan - in a nutshell - proposes that electric utilities be compelled to sell off their generating units and their shares in other generating assets like Maine Yankee[2] and use the proceeds from those sales to diminish (but not eliminate) the need for "stranded cost" recovery from electric customers. By definition, a stranded asset is one whose value in the market is lower than the value reflected in rates; the sale of generation assets provides the best possible indicator of the actual market value for each asset. The residue of unrecovered cost above the actual sale price represents the best indicator of actually stranded costs that then become the subject of negotiations with utilities, contemplated in paragraph seven (d) of the Paradigm. There is no question that the financial viability of Maine's electric utilities is a necessary precondition for any effective restructuring of the industry. Therefore recovery of a large measure of stranded cost from all consumers[3] in Maine using the electric grid (under paragraph 4(d)) is essential. In my opinion, this opportunity extends to so-called "regulatory assets".

In a nutshell, the PUC will retain full regulatory oversight over the distribution function of the local electric utility. The distribution monopoly will retain the same exclusive service territory that exists today and the same accountability for service quality upgrades and complaint resolution. But this distribution monopoly will have an obligation only to connect customers to the system (analogous to providing dial tone in the telephone business) and not to furnish any supplies of energy. Arrangements for supplying each customer with energy will be made in two ways: (1) on the basis of customer choice in contracts between individual customers and individual energy suppliers, aggregators or brokers; or (2) for customers who are unable or unwilling to make such arrangements, a "Standard Service"

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[2]As New England Electric System has already proposed in its "Choice: New England" plan for Rhode Island, Massachusetts and New Hampshire, our plan proposes that the decommissioning liability for any Maine share of a nuclear unit be directly funded through the wires charge, enabling the nuclear entitlement to be sold without such a liability. This scheme will greatly improve the marketability of shares of nuclear units.

[3]All customers of electric utilities in Maine for whom prices are set by the PUC today are expected to be responsible for wires charges payment (under paragraph 4(f)), except for those who leave the system altogether through self-generation or relocation to another state.

offering priced no higher than existing service and provided - under the supervision of the PUC - by a single energy supplier.

It is this last feature of the Paradigm that carries with it the greatest potential for lower electric rates for all customers. The plan contemplates in paragraph 5(d) that every five years the PUC will award the right to provide "Standard Service", and designate the sole provider for a substantial customer base, based on a bid process. There is reason to believe that energy suppliers who seek to develop name recognition in Maine and to secure market share would be prepared to bid lower than the energy component of existing rates. This is particularly true for new potential providers from outside Maine who themselves have access to low-cost surplus power or who are capable of providing natural gas and electric service simultaneously to the same customers.

Nothing of course would limit the ability of affiliates of existing Maine utilities to bid for the right to be the "Standard Service" provider for five-years in their own - or another - service territory in the State. The point here is that <u>real</u> competition among energy providers is likely to reduce electricity prices, even for customers that do not make their own contractual arrangements for power supply.[4]

These are therefore three reasons to anticipate the possibility of (but no guarantee for) lower electricity prices for all customers:

1) the periodic bid process for provision of "Standard Service" to customers who are unwilling or unable to choose their supplier, guaranteeing an opportunity for new market players to serve this customer base every five years;

2) the negotiation among utilities and other intervenors in a PUC proceeding for the settlement of "stranded cost" recovery, both in amount and recovery mechanism (i.e. a ten-year amortization beginning 1/1/2000 or alternatively a one-time payment in the wires charge by all customers on the grid). In exchange for negotiating these issues, the utilities will receive complete deregulation of all generation functions, the effective

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[4]Paragraph 5(d)(iii) requires that customers taking "Standard Service" power at the same voltage level must be charged the same rate irrespective of line losses. This means that rural areas will not pay more than urban areas for "Standard Service", eliminating geographic discrepancies.

repeal of energy planning requirements and the focussing of their business plan on one profitable function regulated in Maine, distribution of electricity; and

3) the existence of a substantial energy surplus in Maine and in the region will compel energy suppliers to offer lower cost energy to customers, municipalities or "Standard Service" providers than is available today. This is because non-New England players in the energy markets (Enron, Hydro-Quebec etc.) will be free to compete directly for retail customers with regional suppliers.

In the absence of a realistic prospect for lower energy prices for all customers, I would have substantial doubts about proceeding in this direction at all and would recommend against it. This then is an important qualifier on my support for the Paradigm.

A second important qualifier arises in the case of paragraph 11 of the plan that purports to correct what otherwise would be an important incentive for polluting generators to operate more frequently in a restructured environment than is the case today. The facts supporting this premise were not fully available to the Paradigm negotiators (certainly not to me) and therefore if the premise proves to be factually incorrect, I regard this paragraph as expendable - an illustration of the need for the kind of flexibility in positions which the Preamble provides, as discussed above.

A third important qualifier concerns the important issues surrounding consumer protection and anti-competitive practices. The Paradigm expresses a strong concern for protecting deregulated markets against the abuses of market power (see paragraphs 1(a), 2(b), 4(d)(v), 5(c), 6(a)(1), 6(b)(1), inter alia) and proposes that the cost of anti-trust enforcement be recoverable in the wires charge. It is easy to envision a form of industry restructuring that rewards a small number of buyers with dramatically lower prices while excluding other sellers from all opportunities for effective competition. A critical aspect of next year's PUC proceeding - in my opinion - is to do everything possible to prevent such an outcome from occurring. Control of markets by unregulated monopolies is a recipe for real harm for small customers, for Maine's economy and - potentially - for the environment.

The final qualifier associated with the Public Advocate's endorsement of this plan concerns the low-income provisions. The provisions found at Section 9 (particularly the Universal Service statute with its goal of preserving access to the grid for customers who use electricity today) represent a minimum in terms

of delivering protections against unaffordable electricity for Maine's most vulnerable citizens. Paragraph 4(d)(vi) places for the first time a ceiling on all "public interest" funding in the wires charge including low-income bill payment assistance.[5] Substantial changes in the structure or level of bill payment assistance from the federal government's LIHEAP program, the State's General Assistance requirements or from any BTU-based tax on all energy providers in the State would necessitate revisiting the 5 mill cap issue.

Notwithstanding these four qualifiers, in my opinion the Paradigm represents an attempt to reconcile conflicting policy goals in a very difficult and complex area and I endorse it. Unquestionably, it will leave the PUC free in 1997 to consider an alternative plan with less risk and uncertainty but also with less extensive customer choice at the retail level. Since the Legislature has been explicit in directing the PUC to develop no less than two plans, in my opinion the formulation of the Paradigm has served at the least the useful function of focusing debate on the riskier and more uncertain aspects of a plan for full deregulation of energy sales by the year 2000. I am grateful for the opportunity to participate in that debate.

[5]For CMP this $.005/KWH ceiling would have corresponded to approximately $45 million in 1994. In 1994 the costs associated with paragraph sub-sections d(ii), (iii), (iv) and (v) were approximately $25 million, $5 million, $7 million and zero respectively. For comparison purposes, CMP's revenues in 1994 from all sources were about $900 million and its own estimates of "stranded cost" liabilities for regulatory assets approximate $800 million and for IPP contract costs in excess of market values exceed $1.2 billion.

STATE OF MAINE
EXECUTIVE DEPARTMENT
STATE PLANNING OFFICE

ANGUS S. KING, JR.
GOVERNOR

EVAN D. RICHERT, AICP
DIRECTOR

MEMORANDUM

December 15, 1995

To: Members of the Work Group
on Electric Industry Restructuring

From: Laurie Lachance

Re: Comments on the Paradigm for Restructuring

****

I have thoroughly reviewed the restructuring proposal entitled "A Paradigm for Restructuring Investor-Owned Electric Utilities: A New Industry Structure", and have a number of thoughts to share with you for your consideration. I have met with the Governor to discuss the proposal and the comments that follow represent the current thinking of the Administration. I should stress, however, that the Administration does not have a definitive position on the ultimate solution, but wants to participate in the development of the policy, making comments and suggestions and raising questions where appropriate.

As I reviewed the proposal, I was struck, once again, by the overwhelming complexity of the issues being discussed. What in theory may be crystal clear, suddenly becomes very cloudy when you explore the questions of "what would this really mean for the people of Maine, or the ratepayers, or the financial health of our businesses, our utilities, our government?". It also raises the very fundamental question of "Will the benefits of restructuring the electric utility industry be greater than the costs?"

My greatest concern, at this point, is that there has been very little quantification of the financial implications of selecting one course over another. I feel extremely uncomfortable about adopting a policy position on a any particular aspect of the plan without having some insight into the degree of net financial benefit that is anticipated and the degree of risk surrounding that estimated benefit. My hope is that the analytical work of the Public Utilities Commission during its proceeding will shed some light on the benefits and costs of various restructuring options and that this information will allow us to formulate policies that will achieve our goals.

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The comments that follow are based on the basic premise that a reliable, low cost supply of electricity is absolutely essential to the long term economic viability of the State of Maine.

Divestiture

Divestiture, in the sense of a separation of generation and distribution assets, is probably appropriate. This does not necessarily imply, however, the immediate sale of current generation assets. My concern is that such a sale of all generation assets may have financial and legal ramifications that are currently very difficult to determine. In addition, what happens if all of our power sources are purchased by out-of-state interests? What if nobody buys Wyman Station? Can Maine afford to have absolutely no control over Maine Yankee? Would the sale of fully depreciated assets create a situation where ratepayers must pay the capital costs of such facilities twice? These and other questions must be addressed before I could urge Administration support for the "divestiture - sale" option.

Components of the Wires Charge

Section 4-d, which suggests that funds to support a number of initiatives will be collected through a wires charge, begs the question "How many extra fees are going to placed in electricity rates and is this consistent with the goal of a fully competitive electricity market or are there other alternatives for covering these costs?"

If the decision is made to pay for these policies through rates, I would only caution that these added costs be monitored very closely to minimize price distortion.

Customer Choice of Energy Suppliers

I am concerned about the implications of section 5-f., which allows customers to leave the grid with no exit fee. Under any scenario, there will be significant costs that will need to be recovered through the wires charge. If large users are able to leave the system without any type of exit fee, the system costs will have to be borne by those remaining on the grid. Additional issues in this area are the availability and cost of back-up power and the responsibility of the utilities to be the "supplier of last resort".

Regional Grid Operation and Management

Efficient operation of this grid is absolutely critical to the successful functioning of our economy. I am in no way knowledgeable enough about the complex topic of grid operation to know if this structure would assure the safe, reliable, efficient handling of electricity flows. I do question the idea of placing grid operations in the hands of a political board with no direct accountability to any jurisdiction.

Stranded Asset Recovery and Equitable Sharing of the Benefits of Restructuring

I have some concern with section 7-d. in which "significantly lower rates are ensured". I have yet to see any studies that assure "significant rate reductions" to all without somehow assuming away some large portion of the utilities' stranded investment. In addition, I fear that a usage-based wires charge combined with no exit fee will be a big enticement for large consumers to self-generate, thus leaving a larger burden for smaller customers to bear.

Stranded investment is the central issue; a final resolution must address this question in detail.

In summary, I would like to commend the authors of the Paradigm for providing a view of how a restructured industry might look. The review of this proposal and the discussion of the Work Group throughout this process have been extremely beneficial in making clear the very subtle and complex nature of the issues being examined. It is critical, at this point, that a systematic, structured review of each issue take place through the PUC's portion of this study and that the PUC provide us with the technical analysis necessary to formulate sound policy.

APPENDIX F

Voting Sheet

Electric Industry Restructuring

Motion: Approve Paradigm as revised 12/12
Ward/Sosland Proposal #1

Date 12/15/95

	Yes	No	Abstain	Absent
Adelberg, Arthur		✓		
Briggs, Robert		X		
Buxton, Anthony	✓			
Cleveland, John (Senator)	✓			
Harriman, Philip (Senator)		✓		
Henderson, Mary	✓			
Johnson, Stephen		✓		
Kontos, Carol (Rep.)	✓			
Lachance, Laurie		✓		
Layman, William	✓			
Lynch, Mary Ann		✓		
McGregor, James			✓	
Rowe, Julie	✓			
Sosland, Daniel	✓			
Taylor, Joseph (Rep.)		✓		
Ward, Stephen	✓			
Weil, Gordon		✓		
Welch, Thomas			✓	
Total	8	8	2	

SW proxy (Steve Ward)
AA proxy (A. Adelberg)

Vote.XLS

A PARADIGM FOR RESTRUCTURING INVESTOR-OWNED ELECTRIC UTILITIES: A NEW INDUSTRY STRUCTURE

December 15, 1995
- with December 12th revisions -

PREAMBLE: This document contains a suggested plan, in accordance with the charge of the workgroup Chair to caucus in groups to fulfill the purposes of the 1995 Legislative Resolve #48, To Require a Study of Retail Competition in the Electric Industry, to restructure the electric utility industry by the year 2000. This plan was formulated with the understanding that the issues and approaches set forth may evolve over time as may the positions of the parties. This plan is submitted to the work group for its consideration with the hope and expectation that all members of the group can support it.

1. Separate distribution, transmission and generation functions

   a. Generation should be divested to ensure against anti-competitive behavior.

   b. Divestiture will occur in conjunction with a transition to a restructured utility industry.

   c. Generation assets will be valued at market value.

   d. This separation of functions, and all aspects of this plan will not apply to municipal electric districts and REA Cooperatives in Maine.

2. Generation

   a. Economic regulation of power generation (cost of service regulation, certificate of public need requirements, etc.) will be ended and be replaced by market forces.

   b. Effective provisions must be established to ensure against anti-competitive behavior by de-regulated generators through exercise of both vertical and horizontal market power.

   c. Assuming full divestiture, nuclear decommissioning and post-shut down costs (as deemed appropriate by the relevant regulatory body) will be recovered through the wires charge (Section 4{d} and 4{f}) of a distribution monopoly that formerly held an entitlement to a nuclear unit.

   d. Formation of power brokers, marketers and customer aggregators should be encouraged.

3. Transmission

   a. Pursuant to the FERC NOPR, provision of transmission services is regulated by the FERC.

   b. Eminent domain authority is retained by the PUC and will be available to transmission providers, including private entities, by petition upon PUC review and approval.

c. Transmission service will be functionally separated or divested from distribution.

4. Distribution

a. Remains a monopoly regulated by the PUC;

b. Has the obligation to distribute energy to customers and connect any customer to the distribution system;

c. Performs billing services at the request of transmission and generation providers;

d. Collects funds from all customers to support:

i. Stranded asset cost recovery (as settled);

ii. Energy efficiency investment and renewable/clean generation commercialization;

iii. Low income bill payment assistance programs;

iv. Regulatory assessment to support the PUC and the Public Advocate; and

v. Enhanced consumer protection and anti-trust enforcement activities as will be necessary in the restructured power system.

vi. In no case, however, shall the PUC approve costs for section ii. through v. that in aggregate exceed 5 mills/KWH (including any ongoing recovery of such costs incurred prior to restructuring).

e. Implements least-cost distribution system planning and investment, incorporating existing precedent.

f. All costs described above will be collected ~~on a usage sensitive basis~~ from all customers of a transmission or distribution provider, on a usage-sensitive basis recognizing demand, energy and customer costs, subject to appropriate rate design.

5. Customer Choice of Energy Suppliers

a. All customers (individually or in self seleced groups) will be able to negotiate for direct (bilateral) retail access to any energy supplier registered to conduct business in Maine.

b. All customers will be provided choice of energy suppliers by January 1, 2000.

c. Customers that are fully informed about market options are essential to the operation of a new market structure; the PUC shall ensure the dissemination of relevant information (see Sec. 12).

d. All customers who do not choose a competitive energy supplier will default to a "standard" service option that provides service priced so that the tital cost to the customer is no higher than that of the existing service. Customers should be able to leave this default service at any time to take competitive service offerings.

i. The PUC will establish a bidding process to select retail energy suppliers to provide "standard" service.

ii. New bids for "standard" service will be taken every five years.

iii. The prices for "standard" service will be identical for all customers taking service at the same voltage level irrespective of location.

iv. All customers who have been denied service by competitive energy suppliers must be provided service at the "standard" rate.

e. The PUC will retain jurisdiction over billing, connection and disconnection disputes as in current PUC regulation.

f. Customers shall be able to connect with or disconnect from the electric grid, and shall be able to substantially increase or reduce usage, without payment of an "exit fee" unless otherwise provided for by contact.

6. Regional Grid Operation and Management

a. The regional grid system will be operated to:

1. Ensure system reliability; and,

2. Facilitate economically efficient power generation; and

3. Ensure open access for all generators to all customers.

b. Grid operation and management will be the responsibility of an independent system operator (ISO) regulated by the FERC.

1. The ISO shall have no financial relationship to any energy provider.

2. The ISO shall be governed by a Board of Governors appointed or elected by the region's electricity consumers or their representatives.

3. ISO responsibilities will include:

a. ensuring open, non-discriminatory access to the transmission system;

b. managing grid operations;

c. maintaining real-time reliability of the system;

d. managing transmission congestion;

e. resolving conflicts between inconsistent power plant generating schedules; and

f. providing inbalance settlement functions.

g. certification of energy providers.

c. Transmission Service

1. Transmission services will be provided under FERC-approved, open access, non-discriminatory tariffs.

2. As proposed in the FERC NOPR, transmission services would be designed and priced to:

(a) encourage economically efficient use of transmission and generation facilities;

(b) send economic price signals for investment in new generation and transmission assets; and

(c) provide for full recovery of costs associated with prudent transmission investments.

d. Power Exchanges

1. Independent regional power exchanges will be encouraged to operate voluntary, market-based auctions for power (for example, for "day ahead" power).

2. Such power exchanges will be regulated by the FERC.

e. Reliability

1. The reliability of the power system must be maintained consistent with national and regional reliability standards and customer's willingness to pay for varying levels of service reliability.

2. Market-based system reliability mechanisms will be implemented wherever practical.

7. <u>Stranded Asset Recovery and Equitable Sharing of the Benefits of Restructuring</u>

a. The public policy decision to permit electric utility restructuring requires an understanding that the benefits of restructuring will exceed the costs of restructuring, including consideration of uncertainties in such estimations.

b. The determination of costs and benefits of restructuring will be considered in a public forum, such as the PUC, with the availability of conventional legal procedures.

c. The magnitude of restructuring costs and benefits will depend on the ultimate structure of the electric utility industry and the timing of the restructuring. Above market, sunk costs potentially include unrecovered (above market) fixed capital costs of generation ownership and above market power contract costs. Below market assets include a substantial number of generating units and substantial portions of the transmission and distribution system. To the extent that restructuring nets the above market assest with below market assets, there exists the potential for significant mitigation of non-economic costs of electric utilities.

d. Subject to an understanding that there is a public benefit, the benefits shall be apportioned equitably, on a negotiated basis, between ratepayers and utilities. This will ensure significantly lower rates for ratepayers and significant recovery of non-economic costs by electric utilities. Settled recovery should be through a non-by passable, usage-based wires charge beginning in 2000. The amounts to be recovered and the form of recovery (one time, true up, rate design, scheduling, etc.) will be approved by the PUC.

e. The preferred approach to achieving market value of generation assets is through an auction.

f. ~~In no event will contract obligations be breached, modified or abrogated on an involuntary or unilateral basis.~~ In the restructuring and thereafter, the rights and obligations of contracts between electric utilities and other parties, such as those with bondholders, energy service providers and others, will be respected and shall not be subject to abrogation, modification, or diminishment on any involuntary or unilateral basis.

8. Consumer Protection

a. Appropriate procedures for the regulation of retail energy providers will be established and effective at least 12 months before the introduction of retail choice.

b. The PUC shall retain authority over policies regarding connecting customers to and disconnecting customers from the distribution system.

c. The PUC shall oversee billing disputes between the regulated distribution monopoly and competitive energy providers.

d. The PUC, the Public Advocate and the Attorney General will conduct enhanced consumer protection activities designed to deter anti-competitive practices and to address effectively the consumer protection issues created by the use of competitive markets to supply electricity.

The cost of such enhanced enforcement will be included in the wires charge established by Section 4(d) and 4(f).

e. The PUC and the Public Advocate shall intervene as necessary at the FERC to ensure consumer interests in transmission operation and pricing and also in power exchange operation are effectively addressed.

f. No later than January 1, 2003, there will be conducted a review of the staffing and role of the PUC which will evaluate reductions in regulatory expense and changes in staffing patterns.

9. "Stranded Benefits" Provisions

a. Low income customer protection

i. Until such time as the PUC determines that low income customer support services are effectively replaced through an alternative mechanism, existing programs to support low-income customers shall remain in place.

Funds to support such programs shall be included in the wires charge collected by Section 4(d) and 4(f).

ii. There shall exist in statute a policy protecting the benefits to the State that result from access to the transmission and distribution system by all consumers of electricity. Recognizing that electricity is a necessity of life that could be jeopardized as a result of the restructuring of the electric industry, it is not the intent of this proposal to reduce to any degree participation in the transmission and distribution system by citizens or businesses in Maine.

b. Energy efficiency investment provisions

i. Objectives:

▸▸Lower customer electricity bills;

▸▸Minimize power system environmental impacts.

▸▸Realize improvements in the housing stock and commercial infrastructure that reduce energy consumption.

ii. Efficiency investment shall be considered in least-cost distribution planning.

iii. The distribution monopoly must:

▸▸Maintain adequate investment levels at least through the time when competitive generation markets are fully effective and have initially matured.

▸▸Continue to evolve efficiency investment with emphasis on:

(1) Lost opportunity markets.

(2) Permanent transformation of energy-efficiency markets.

(3) Geographically targeted energy efficiency investments to reduce transmission and distribution costs.

▸▸Establish and periodically review an appropriate budget that meets the above investment objectives through a PUC proceeding.

▸▸When competitive generation markets are fully effective and have matured - to a point where the actual effects of competitive generation can be assessed - the need for mandating demand-side distribution utility investment will be reassessed and appropriate changes or refinements made.

iv. Nothing in this proposal is intended to prevent energy service companies from installing energy efficiency improvements that are paid for by a share of the customer's energy savings.

10. Renewables provisions

a. Objectives

i. Facilitate commercialization of qualifying clean renewable and fuel cell technologies that could become commercially competitive within the next ten years.

ii. Encourage continued research and development of indigenous, renewable energy resources (solar, wind, biomass, hydro).

b. Specific provisions

i. Market structure reforms as described above to provide open access to generation markets.

ii. Least-cost distribution investment.

iii. Establish an administrative process before the PUC to identify technologies that qualify for commercialization support and to identify actions necessary to commercialization such technologies.

iv. The distribution company would conduct activities as identified and approved in the above administrative process.

▸▸Costs of such activities will be included in the wires charge established by Section 4(d) and 4(f).

v. After market structure reforms have been implemented and their effects on qualifying technologies assessed, provide interim subsidy as deemed necessary by the PUC

for qualifying technologies that need such to become commercially competitive.

11. Environmental Equivalency

~~When Congress enacted the Clean Air Act in 1970, Congress assumed that existing, high emissions fossil fuel powerplants owned by electric utilities would be promptly retired. Congress allowed these existing units to not meet the higher pollution control requirements of other plants, based on that assumption.~~

~~The assumption has proven incorrect, as many of these high emissions utility plants remain in service today.~~

~~To "level" the economic and environmental playing field between the older, high emissions utility generating units and newer generators that have been required to meet strict "new source" emissions standards, existing electric utility fossil generation would reduce selected emissions (criteria pollutants -- SO2 and NOX) over a transition period to the equivalent of "new source" requirements for same fuel units.~~

~~a. Appropriate offset trading would be allowed.~~

~~b. Existing unit air emissions licenses would be amended to include these emissions reduction requirements.~~

State restructuring plans should acknowledge the relationship between the emergence of a competitive electricity market and the possibility of increased use of older electric utility owned fossil fuel power plants. The regional effects of restructuring include the possibility of increased air pollution affecting areas that may or may not benefit from the electric generation which causes the increase air pollution.

Certain aspects of this problem are subject to federal regulation under the Clean Air Act. To varying degrees, states exercise control over local aspects of this problem. The restructuring plans of the New England states should set the example for restructuring plans in other regions. A purpose of these plans should be to relieve the pressure which transported pollution places on manufacturers, utilities and citizens in the region. These plans should seek to mitigate detrimental air quality impacts from electric utility generation associated with restructuring through negotiation, including through offsets.

Within New England, Maine is also affected by intra-region transport from utility plants downwind. The restructuring plans of other New England states and, if necessary, regional transmission agreements and similar protocols, must address this problem.

Maine's restructuring plan must take into account the relatively greater advances in air pollution control already achieved in the State and must allow careful negotiation of non-license changes in utility fossil fuel plants' pollution level. This must be done in such a way so that no additional burdens will be placed on sources not previously owned by an electric utility which was

subject to regulation by the Maine Public Utilities Commission with regard to its electric rates and services to retail customers.

12. Energy Security

The PUC (or other unit of government) will have authority and staffing sufficient:

a. To monitor overall system operations beyond the responsibilities of each individual industry sector in order to promote system reliability.

b. To provide information to energy sellers and buyers that is unbiased and accurate regarding the sources and cost of electricity and efficiency improvements.

c. To monitor the diversity of energy suppliers in order to preserve to Maine's long-term energy security.

APPENDIX G

Voting Sheet

Electric Industry Restructuring

Motion: Adopt alternative 2 (utility mark-up of package)
Adelberg / Johnson

Date 12/15/95

	Yes	No	Abstain	Absent	
Adelberg, Arthur	✓				
Briggs, Robert	✓				
Buxton, Anthony		✓			
Cleveland, John (Senator)		✓			
Harriman, Philip (Senator)		✓			
Henderson, Mary		✓			
Johnson, Stephen	✓				
Kontos, Carol (Rep.)		✓			
Lachance, Laurie		✓			
Layman, William		✓			S. Ward as proxy
Lynch, Mary Ann	✓				A. Adelberg as proxy
McGregor, James			✓		
Rowe, Julie		✓			
Sosland, Daniel		✓			
Taylor, Joseph (Rep.)		✓			
Ward, Stephen		✓			
Weil, Gordon		✓			
Welch, Thomas			✓		
Total	4	12	2		

Vote.XLS

Proposal #2

A PARADIGM FOR RESTRUCTURING INVESTOR-OWNED ELECTRIC UTILITIES: A NEW INDUSTRY STRUCTURE

December 13, 1995

Clr markup for changes to title

PREAMBLE:

This document contains a suggested plan, in accordance with the charge of the workgroup Chair to caucus in groups to fulfill the purposes of the 1995 Legislative Resolve #48, To Require a Study of Retail Competition in the Electric Industry, to restructure the electric utility industry, ~~by the year 2000.~~ This plan was formulated with the understanding that the issues and approaches set forth may evolve over time as may the positions of the parties. This plan is submitted to the work group for its consideration with the hope and expectation that all members of the group can support it.

1. Separate distribution, transmission and generation functions

a. Generation should be ~~divested to ensure against anti-competitive behavior.~~ **functionally separated to reflect economic deregulation.**

b. ~~Divestiture will occur~~ **Utilities should be provided positive incentives to voluntarily divest generating assets** in conjunction with a transition to a restructured utility industry.

c. Generation assets will be valued at market value.

d. This separation of functions, and all aspects of this plan will ~~not~~ apply to municipal electric districts and REA Cooperatives in Maine.

2. Generation

a. Economic regulation of power generation (cost of service regulation, **Least Cost Planning requirement** certificate of public need requirements, etc.) will be ended and be replaced by market forces.

b. ~~Effective provisions must be established~~ **Existing antitrust laws should be used** to ensure against anti-competitive behavior by de-regulated generators through exercise of both vertical and horizontal market power. **Continuing regulation of distribution and transmission can also ensure open access by sellers and buyers.**

c. ~~Assuming full divestiture, N~~nuclear decommissioning and post-shut down costs (as deemed appropriate by the relevant regulatory body) will be recovered through the wires charge (Section 4{d} and 4{f}) of a distribution monopoly that **holds or** formerly held an entitlement to a nuclear unit.

d. Formation of power brokers, marketers and customer aggregators should be encouraged.

3. Transmission

a. Pursuant to the FERC NOPR, provision of transmission services is regulated by the FERC.

b. Eminent domain authority is retained by the PUC **or transferred to the FERC,** and will be available to transmission providers, including private entities, by petition upon PUC review and approval.

c. Transmission service will be functionally separated or **voluntarily** divested from distribution.

4. Distribution

a. **To the extent facilities are provided on an exclusive basis, or services are provided for which customers have no choices, distribution** ~~R~~remains a monopoly regulated by the PUC;

b. Has the obligation to distribute energy to customers and connect any customer to the distribution system **and may not use ownership to restrict access**;

c. Performs billing services at the request of transmission and generation providers;

d. Collects funds from all customers to support:

i. Stranded asset cost recovery ~~(as settled)~~;

~~ii. Energy efficiency investment and renewable/clean generation commercialization;~~

~~iiii.~~ ~~L~~low income bill payment assistance programs **to the extent not funded through taxes, but only if imposed on all energy suppliers**;

~~iv.~~ **iii.** Regulatory assessment to support the PUC and the Public Advocate; and

iv. Legislative Mandates

~~v. Enhanced consumer protection and anti trust enforcement activities as will be necessary in the restructured power system.~~

~~vi. In no case, however, shall the PUC approve costs for section ii. through v. that in aggregate exceed 5 mills/KWH (including any ongoing recovery of such costs incurred prior to restructuring).~~

~~e. Implements least cost distribution system planning and investment; incorporating existing precedent.~~

~~f~~e. All costs described above will be collected on a **customer and/or** usage sensitive basis from all customers of a transmission or distribution provider, on a usage-sensitive basis recognizing demand, energy and customer costs, subject to appropriate rate design.

f. The marketing function of retail distribution will not be subject to economic regulation.

5. **Customer Choice of Energy Suppliers**

a. All customers (individually or in self seleced groups) will be able to negotiate for direct (bilateral) retail access to any energy supplier registered to conduct business in Maine.

b. All customers will be provided choice of energy suppliers by January 1, 2000**, or as soon thereafter as reasonably practicable**.

c. Customers that are fully informed about market options are essential to the operation of a new market structure; the PUC shall ensure the dissemination of relevant information (see Sec. 11~~2~~).

d. All customers who do not choose a competitive energy supplier will default to a "standard" service option~~, that provides service priced so that the total cost to the customer is no higher than that of the existing service~~. Customers should be able to leave this default service ~~at any time~~ **upon reasonable notice** to take competitive service offerings.

~~i. The PUC will establish a bidding process to select retail energy suppliers to provide "standard" service.~~

~~ii. New bids for "standard" service will be taken every five years.~~

~~iii~~ **i.** The prices for "standard" service will be identical for all customers taking service at the same voltage level irrespective of location.

~~iv~~ **ii.** All customers who have been denied service by competitive energy suppliers must be provided service at the "standard" rate**, subject to appropriate credit protection**.

e. The PUC will retain jurisdiction over billing, connection and disconnection disputes as in current PUC regulation.

f. ~~Customers shall be able to connect with or disconnect from the electric grid, and shall be able to substantially increase or reduce usage, without payment of an "exit fee" unless otherwise provided for by contact.~~ **Customers shall be able to reconnect with the electric grid upon payment of an appropriate fee.**

6. Regional Grid Operation and Management

a. The regional grid system will be operated to:

1. Ensure system reliability; and,

2. Facilitate economically efficient power generation; and

3. Ensure open access for all generators to all customers.

b. Grid operation and management will be the responsibility of an independent system operator (ISO) regulated by the FERC.

1. The ISO shall have no financial relationship to any energy provider.

2. The ISO shall be governed by a Board of Governors ~~appointed or elected by~~ **which includes representatives of** the region's electricity consumers~~, or their representatives.~~

3. ISO responsibilities will include:

   a. ensuring open, non-discriminatory access to the transmission system;

   b. managing grid operations;

   c. maintaining real-time reliability of the system;

   d. managing transmission congestion;

   e. resolving conflicts between inconsistent power plant generating schedules; and

   f. providing inbalance settlement functions.

   g. certification of energy providers.

c. Transmission Service

1. Transmission services will be provided under FERC-approved, open access, non-discriminatory tariffs.

2. As proposed in the FERC NOPR, transmission services would be designed and priced to:

   (a) encourage economically efficient use of transmission and generation facilities;

   (b) send economic price signals for investment in new generation and transmission assets; and

   (c) provide for full recovery of costs associated with prudent transmission investments.

d. Power Exchanges

1. Independent regional power exchanges will be encouraged to operate voluntary, market-based auctions for power (for example, for "day ahead" power).

2. Such power exchanges will be regulated by the FERC.

e. Reliability

1. The reliability of the power system must be maintained consistent with national and regional reliability standards and customer's willingness to pay for varying levels of service reliability.

2. Market-based system reliability mechanisms will be implemented wherever practical.

7. **Stranded Asset Recovery ~~and Equitable Sharing of the Benefits of Restructuring~~**

a. The public policy decision to permit electric utility restructuring requires an understanding that the benefits of restructuring will exceed the costs of restructuring, including consideration of uncertainties in such estimations. **In this context, it is understood that shifting of legitimate verifiable sunk costs between parties does not constitute a benefit.**

b. The determination of costs and benefits of restructuring ~~will~~ **should** be ~~considered~~ **determined** in a public forum, such as the PUC~~, with the availability of conventional legal procedures~~.

c. The magnitude of restructuring costs and benefits will depend on the ultimate structure of the electric utility industry and the timing of the restructuring. Above market, sunk costs potentially include unrecovered (above market) fixed capital costs of **some** generation ownership**, social programs, regulatory assets** and above market power contract costs. **These represent potentially stranded costs and should be recovered from those who cause them to be stranded.** ~~Below market assets include a substantial number of generating units and substantial portions of the transmission and distribution system. To the extent that restructuring nets the above market assest with below market assets, there exists the potential for significant mitigation of non-economic costs of electric utilities.~~

~~d. Subject to an understanding that there is a public benefit, the benefits shall be apportioned equitably, on a negotiated basis, between ratepayers and utilities. This will ensure significantly lower rates for ratepayers and significant recovery of non-economic costs by electric utilities. Settled R~~recovery **of strandable costs** should be through a non-by passable, usage-based wires charge beginning in 2000. The

amounts to be recovered and the form of recovery (one time, true up, rate design, scheduling, etc.) will be approved by the PUC.

c. ~~The preferred~~ **One possible** approach to ~~achieving~~ **establishing** market value of generation assets is through an auction.

f. In no event will **utility investments and other obligations be treated differently than investments by non-utilities in generation.** ~~contract obligations be breached, modified or abrogated on an involuntary or unilateral basis.~~ In the restructuring and thereafter, the rights and obligations of contracts between electric utilities and other parties, such as those with bondholders, energy service providers and others, will be respected and shall not be subject to abrogation, modification, or diminishment on any involuntary or unilateral basis.

8. Consumer Protection

a. Appropriate procedures for the regulation of retail energy providers will be established and effective at least 12 months before the introduction of retail choice.

b. The PUC shall retain authority over policies regarding connecting customers to and disconnecting customers from the distribution system.

c. The PUC shall oversee billing disputes between the regulated distribution monopoly and competitive energy providers**, unless otherwise agreed to by the parties.**.

d. The PUC, the Public Advocate and **or** the Attorney General will conduct ~~enhanced~~ consumer protection activities designed to deter anti-competitive practices and to address effectively the consumer protection issues created by the use of competitive markets to supply electricity.

~~The cost of such enhanced enforcement will be included in the wires charge established by Section 4(d) and 4(f).~~

e. The PUC and the Public Advocate shall intervene as necessary at the FERC to ensure consumer interests in transmission operation and pricing and also in power exchange operation are effectively addressed.

f. No later than January 1, 2003, there will be conducted a review **by the legislature** of the staffing and role of the PUC **and the OPA** which will evaluate reductions in regulatory expense and changes in staffing patterns.

9. **"Stranded Benefits" Provisions**

a. Low income customer protection

i. ~~Until such time as the PUC determines that~~ **Protection of low income customers is a function which properly is addressed through taxation and appropriations, like other welfare issues. Only if the legislature fails to address** low income customer support services~~, are effectively replaced through an alternative mechanism~~, **will** existing programs to support low-income customers ~~shall~~ remain in place **under current authority**.

~~Funds to support such programs shall be included in the wires charge collected by Section 4(d) and 4(f).~~

ii. There shall exist in statute a policy protecting the benefits to the State that result from access to the transmission and distribution system by all consumers of electricity. Recognizing that electricity is a necessity of life that could be jeopardized as a result of the restructuring of the electric industry, it is not the intent of this proposal to reduce to any degree participation in the transmission and distribution system by citizens or businesses in Maine.

b. Energy efficiency investment provisions

i. Objectives:

~~Lower customer electricity bills~~**Minimize inefficient energy usage**;

Minimize ~~power system~~ environmental impacts **of energy usage**.

Realize improvements in the housing stock and commercial infrastructure that reduce energy consumption.

ii. Efficiency investment shall be considered in ~~least-cost~~ distribution planning.

~~iii. The distribution monopoly must~~:

~~Maintain adequate investment levels at least through the time when competitive generation markets are fully effective and have initially matured.~~

~~Continue to evolve efficiency investment with emphasis on:~~

~~(1) Lost opportunity markets.~~

~~(2) Permanent transformation of energy efficiency markets.~~

~~(3) Geographically targeted energy efficiency investments to reduce transmission and distribution costs.~~

~~Establish and periodically review an appropriate budget that meets the above investment objectives through a PUC proceeding.~~

~~When competitive generation markets are fully effective and have matured—to a point where the actual effects of competitive generation can be assessed—the need for mandating demand-side distribution utility investment will be reassessed and appropriate changes or refinements made.~~

~~iv~~ iii. Nothing in this proposal is intended to prevent energy service companies from installing energy efficiency improvements that are paid for by a share of the customer's energy savings.

10. Renewables provisions

a. ~~Objectives~~**Recognizing that a policy in favor of competition is being established, regulated utility subsidies for renewables are no longer appropriate.**

~~i. Facilitate commercialization of qualifying clean renewable and fuel cell technologies that could become commercially competitive within the next ten years.~~

~~ii. Encourage continued research and development of indigenous, renewable energy resources (solar, wind, biomass, hydro).~~

b. Specific provisions

i. Market structure reforms as described above to provide open access to generation markets.

ii. Least cost distribution investment.

iii. Establish an administrative process before the PUC to identify technologies that qualify for commercialization support and to identify actions necessary to commercialization such technologies.

iv. The distribution company would conduct activities as identified and approved in the above administrative process.

Costs of such activities will be included in the wires charge established by Section 4(d) and 4(f).

v. After market structure reforms have been implemented and their effects on qualifying technologies assessed, provide interim subsidy as deemed necessary by the PUC for qualifying technologies that need such to become commercially competitive.

11. Environmental Equivalency

When Congress enacted the Clean Air Act in 1970, Congress assumed that existing, high emissions fossil fuel powerplants owned by electric utilities would be promptly retired. Congress allowed these existing units to not meet the higher pollution control requirements of other plants, based on that assumption.

The assumption has proven incorrect, as many of these high emissions utility plants remain in service today.

To "level" the economic and environmental playing field between the older, high-emissions utility generating units and newer generators that have been required to meet strict "new source" emissions standards, existing electric utility fossil generation would reduce selected emissions (criteria pollutants – SO2 and N0X) over a transition period to the equivalent of "new source" requirements for same fuel units.

a. Appropriate offset trading would be allowed.

b. Existing unit air emissions licenses would be amended to include these emissions reduction requirements.

~~State restructuring plans should acknowledge the relationship between the emergence of a competitive electricity market and the possibility of increased use of older electric utility owned fossil fuel power plants. The regional effects of restructuring include the possibility of increased air pollution affecting areas that may or may not benefit from the electric generation which causes the increase air pollution.~~

~~Certain aspects of this problem are subject to federal regulation under the Clean Air Act. To varying degrees, states exercise control over local aspects of this problem. The restructuring plans of the New England states should set the example for restructuring plans in other regions. A purpose of these plans should be to relieve the pressure which transported pollution places on manufacturers, utilities and citizens in the region. These plans should seek to mitigate detrimental air quality impacts from electric utility generation associated with restructuring through negotiation, including through offsets.~~

~~Within New England, Maine is also affected by intra region transport from utility plants downwind. The restructuring plans of other New England states and, if necessary, regional transmission agreements and similar protocols, must address this problem.~~

~~Maine's restructuring plan must take into account the relatively greater advances in air pollution control already achieved in the State and must allow careful negotiation of non license changes in utility fossil fuel plants' pollution level. This must be done in such a way so that no additional burdens will be placed on sources not previously owned by an electric utility which was subject to regulation by the Maine Public Utilities Commission with regard to its electric rates and services to retail customers.~~

~~12~~11. Energy Security

The PUC (or other unit of government) will have authority and staffing sufficient:

a. To monitor overall system operations beyond the responsibilities of each individual industry sector in order to promote system reliability.

b. To provide information to energy sellers and buyers that is unbiased and accurate regarding the sources and cost of electricity and efficiency improvements.

c. To monitor the diversity of energy suppliers in order to preserve to Maine's long-term energy security.

APPENDIX H

June 7, 1995

Thomas Welch, Chairman
Public Utilities Commission
Station 18
Augusta, Maine 04333

Chairperson
Work Group on Electric Industry Restructuring
c/o Office of Policy And Legal Analysis
Station 13
Augusta, Maine 04333

Dear Chairman Welch and Chairperson of the Work Group:

This letter is to recommend to your attention in your deliberations on electric industry restructuring the following items:

1. The Ad Hoc Committee List (enclosed). The Ad Hoc Committee List includes a considerable number of issues identified by various stakeholders organized around the 11 issues identified in the resolve creating the studies upon which you are embarking. This list provides a more complete compilation of the issues raised by electric industry restructuring, and we hope that you will examine the list carefully in your deliberations. The list was not adopted in any formal manner by the Ad Hoc Committee or this committee. The compromise which led to the list of 11 issues which appear in the resolve, however, included agreement that this longer list would be forwarded to you for your review and consideration.

2. The following bills (copies enclosed) which were killed or, in the case of L.D. 1063, completely rewritten by this committee with the understanding the issues raised by the

bills would be reviewed in the study process. The issues list covers most of the issues raised by these bills. However, we wanted you to have a list of the bills; we would recommend that you review the bills so that you are aware of the issues as they were originally presented to the Legislature. The bills are these:

L.D. 1063, Resolve, to Require a Study of Retail Competition in the Electric Utility Industry by the Public Utilities Commission (the bill which, as amended, created the study on which you are embarking)

L.D. 433, An Act to Reduce the Cost of Electricity and to Provide for Market Competition in the Production and Sales of Electricity

L.D. 492, An Act Relating to the Authority of Governing Boards of Consumer-owned Electric Utilities

L.D. 886, An Act to Improve the Business Climate in the State by Making Power Available at a Lower Rate

L.D. 283, An Act Relating to the Joint Use of Equipment

L.D. 866, An Act to Establish a Reduced Rate for Electric Utility Customers on Life-support Equipment

L.D. 1502, An Act Concerning Municipal Electric Districts and the Development of a Competitive Energy Market

If you have questions, please don't hesitate to contact us or our Legislative Counsel, Jon Clark, who may be reached in the Office of Policy and Legal Analysis.

Thank you.

Sincerely,

David L. Carpenter
Senate Chair

Carol A. Kontos
House Chair

Enclosures

7294NRG

6/1/95

AD HOC COMMITTEE LIST

Transition Issues

1. **How utility stranded investment is defined and calculated and how it will be dealt with;**

   - Stranded costs, including NUG costs, in terms of who pays and how the costs affect the transition
   - Retail wheeling vs. stranded investment
   - Recovery of legitimate and justifiable stranded costs of utilities, if any
   - How is stranded investment to be dealt with?
     - How is it defined and calculated and by whom and when?
     - How is it treated?
   - Stranded investment
   - Recovery by utilities of legitimate, verifiable stranded assets. Utilities are obligated to take all reasonable measures to mitigate the costs of existing commitments.
   - Stranded investment issues
   - Recovery of legitimate and justifiable stranded investments

Outcome Issues

1. **How utility stranded investment is defined and calculated and how it will be dealt with;**

Transition Issues

2. How the regional marketplace and federal law affect the transition;

- Date of and preconditions for institution of retail market access (retail wheeling) including, but not limited to, reciprocity and regional reforms
- How does the regional market place affect the transition? Linkages with similar efforts in other states and with RTG's
- Regional issues (e.g., reciprocity for suppliers and power marketers, both utility and independent)
- Impact of actions by Congress/federal government(e.g., what happens if PURPA is repealed or dramatically altered?)
- Regional issues (How the laws of other states in the region impact competition in Maine)
- Address regional transmission association

Outcome Issues

2. How the regional marketplace and federal law affect the transition;

- How the regional market place affects outcomes in Maine. (Linkage with similar efforts in other states and with regional bodies allocating transmission capacity)
- Regional transmission association issues
- A plan to address regional changes in the electric industry as part of:
  - A plan by September, 1996, including a schedule and recommended statutory and regulatory changes, for all or nearly all electric generation facilities to be in an open competitive market for wholesale energy by the year 2000
  - A plan by March, 1997, including recommended statutory and regulatory changes, for achieving the maximum amount of retail competition that benefits all customers as soon as possible
- Changes necessary in federal laws and regulations to accomplish as part of:
  - A plan by September, 1996, including a schedule, for all or nearly all electric generation facilities to be in an open competitive market for wholesale energy by the year 2000
  - A plan by March, 1997 for achieving the maximum amount of retail competition that benefits all customers as soon as possible
- Energy Policy Act

Transition Issues

3. **How the state's energy policy, including policies concerning conservation, use of renewables and indigenous resources and diversity of supply, will be affected;**

   - Ensure that the economic and environmental benefits of establishing a commercially viable renewables industry are maintained: remove market barriers to renewables and clean (low-emission) generation, (such as through requiring distribution company to facilitate clean distributed generation)
   - What should be the State's energy policies and how should those policies co-exist with the competitive marketplace?
   - Ensure that economic and environmental benefits of demand-side management are maintained by providing for investment and infrastructure stability during the transition period:
     - where market barriers continue to exist, ensure benefits of efficiency investments are made through regulated distribution company; maintain DSM service delivery infrastructure; maintain adequate (equivalent) levels of DSM spending

4. **How the state's environment and environmental policies will be affected;**

   - Old source review for generation; amend air permits (DEP/EPA)

Outcome Issues

3. **How the state's energy policy, including policies concerning conservation, use of renewables and indigenous resources and diversity of supply, will be affected;**

   - The promotion of reasonable and effective conservation and demand management
   - Regulation to maintain control over energy policy
     - Encourage conservation, DSM
     - Encourage of use of renewables, indigenous resources
     - Encourage diversity of generation resources
   - "Big picture" energy policy
     - Diversity of fuel source, size and geography
     - Use of renewable, indigenous resources
     - Economic development issues (e.g., ratepayer dollars going to out-of-state or Canadian energy suppliers)
     - Technology innovation (e.g., increased efficiency, reduced emissions)
   - Structure distribution company so that least cost planning principles apply

4. **How the state's environment and environmental policies will be affected;**

   - The application of state and federal environmental laws

Transition Issues

Outcome Issues

- Environmental quality — environmental quality should improve and not be sacrificed in any new system. Any reform must support energy efficiency and the research, development and commercialization of renewable resources. All players in generation market should abide by same rules; e.g., single set of environmental regulation by ending disparity between "old" and "new" sources

5. **How social policies, including low-income programs and universal service goals, will be affected;**

   - The social costs of deregulation and the fate of present low-income subsidies so that in the new open market social polices are not achieved through utility programs affecting ratepayers
   - Obligation to serve
   - Regulation to protect universal service and social goals
     - Who, if anyone, will have a legal obligation to serve (universal service)?
     - What utility functions are properly handled by a monopoly for policy, economic or other reasons?
   - Provision for universal service

5. **How social policies, including low-income programs and universal service goals, will be affected;**

   - Provision of electric service to low-income persons
   - The maintenance and regulation of those services which are required to be provided on a monopoly basis
   - Needs of low-income customers and of rural areas
   - Obligation to serve (if any)

6. **How ratepayers, shareholders of investor-owned electric utilities, owners of consumer-owned electric utilities and other owners of energy resources will be affected;**

   - Benefits must be shared by all customers

6. **How ratepayers, shareholders of investor-owned electric utilities, owners of consumer-owned electric utilities and other owners of energy resources will be affected;**

   - Residential ratepayer benefits

Transition Issues

- Define the legal rights of customers and utilities as they exist at the start of the transition (Define Rights at the Start)
- Define the legal rights of customers and utilities during and after the transition (Defined Interim and Final Rights)
- Provide regulatory oversight to protect defined rights and to ensure timely completion of the transition (Regulatory Oversight and Timely Completion)
- Ensure relative parity in gradual deregulation: utilities gain competitive autonomy as customers gain purchasing freedom (Parity in Deregulation)
- The relationship between the existing electric utility companies; promoting efficiencies which may be gained by mergers or other cross-utility arrangements

Outcome Issues

- Real reform, not cost shifting: rate fairness is an overriding principle. All classes must benefit equitably; larger users should not benefit at expense of small business, institutional and residential customers; low income and other vulnerable customers protected
- Ensure utility can compete in new market (e.g., heating, restaurant cooking)
- Minimization of winners/losers

7. How the state's economy will be affected;

- What level and form of competition will maximize the benefits to Maine's electric ratepayers and the State's economy?

7. How the state's economy will be affected;

- Economic development
- Better paying jobs

8. How reliability of service will be affected;

- Regulation to ensure system reliability
- Planning responsibilities for the provision of electric service

8. How reliability of service will be affected;

- System reliability
- Reliable and safe service should be maintained
- Assure system reliability

Transition Issues

9. How obligations of contracts will be affected;

- Sanctity of existing contracts

10. How a system for the transmission, distribution and generation of electricity should be structured;

- Timeframe for implementation of changes
- Joint use of facilities
- Necessary modification of statutory and regulatory requirements and policies
- Timing (When should it begin? In all markets at once or staggered schedule?)
- Role of regulators and regulation
- Unbundling (vertical disintegration) between generation, transmission and distribution function and ensure adequate policing. Distribution company should not recover revenues on a sales volume basis; annual revenue or customers (decoupling)
- The role of regulators
- Timing determination
- What is the proper role of regulators/regulation in the restructured marketplace and the transition to the restructured marketplace? (What matters will competition not adequately address without regulation?)

Outcome Issues

9. How obligations of contracts will be affected;

- None

10. How a system for the transmission, distribution and generation of electricity should be structured;

- New PUC procedures, limited oversight
- The structure and governance of regulated utilities
- The optimal structure for the restructured market place
  - Role of GENCOs, TRANSCOs, DISCOs, consumer associations
  - Role of consumer-owned electric utilities
  - Regional entities needed (RTGs, NEPOOL, etc.)
- Industry structure
- Remaining regulation (if any)
- Ensure that generation, distribution and transmission of electricity are unbundled
- Remaining regulation
- A plan by September, 1996, including a schedule and recommended statutory and regulatory changes, for all or nearly all electric generation facilities to be in an open competitive market for wholesale energy by the year 2000

Transition Issues

- What is the best way to accomplish the transition from the status quo to the desired level of competition, the desired electric industry structure, the desired regulatory structure and the desired articulation and implementation of energy policy?
- Unbundling of services
- Define the start and set a date for the end of the transition (Defined Transition)
- Role of regulators during transition

Outcome Issues

- A plan by March, 1997, including recommended statutory and regulatory changes, for achieving the maximum amount of retail competition that benefits all customers as soon as possible
- If utilities remain partial monopolies, regulation of the monopolies (Regulation of Remaining Monopolies)
- Role of regulators in restructured market
  - Are there functions that should remain regulated monopolies?
- Who will have responsibility for planning?
- How to structure the future market so as to remove the existing barriers to competition (e.g., separation of ownership of generation from transmission and distribution)

11. To what extent protections against anti-competitive practices can be provided;

- Regulation to discourage anti-competitive arrangements (price discrimination)
- Statutory and regulatory changes necessary to allow competition
- What will public policy be to insure that a level playing field is created among stakeholders?
- What electric industry structure is most consistent with the optimal level of competition?
- Retail choice/competition

11. To what extent protections against anti-competitive practices can be provided;

- Regulation to discourage anti-competitive arrangements (price discrimination)
- Level playing field issues; tax subsidies
- State level prohibitions on anticompetitive behavior, including horizontal and vertical constraints (State Prohibition of Anticompetitive Behavior)
- State level oversight of competition, at both the wholesale and retail levels, with ease of access for customers and competitors to restore the competitive market (State Remedies for Anticompetitive Activity)
- Open access to/exchange of pricing information

117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document **No. 1502**

H.P. 1067 House of Representatives, May 4, 1995

An Act Concerning Municipal Electric Districts and the Development of a Competitive Energy Market.

Reference to the Committee on Utilities and Energy suggested and ordered printed.

JOSEPH W. MAYO, Clerk

Presented by Representative SAMSON of Jay.
Cosponsored by Representatives: BERRY of Livermore, CAMERON of Rumford, CHASE of China, CHICK of Lebanon, JACQUES of Waterville, JONES of Bar Harbor, KONTOS of Windham, LEMAIRE of Lewiston, MARTIN of Eagle Lake, PENDLETON of Scarborough, TYLER of Windham, VIGUE of Winslow, VOLENIK of Sedgwick, Senator: ESTY of Cumberland.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §3192 is enacted to read:

§3192. Competitive energy alternatives policy

The Legislature finds that it is in the best interests of the State to ensure that a competitive market in the provision of electric energy exists. The Legislature further finds that a competitive energy market will increase alternatives available to consumers, decrease the cost of energy and improve the quality of electric energy services. It is the policy of this State that in order to encourage a competitive market, all consumers of electric energy in this State must have the right to full, open and unencumbered access to alternative sources of electric energy on a free-market basis, including, but not limited to, the purchase of electricity from a municipal power district. The Public Utilities Commission is directed to give explicit consideration and substantial weight to this policy in its decisions involving competitive alternatives, including requests for approval under section 2102. In its order in any such proceeding, the commission shall explain expressly the manner in which its decision promotes the policy of the State as set forth in this section.

Sec. 2. 35-A MRSA §3903, sub-§4, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

4. Favorable vote. If a majority of the legal votes cast on this question favor incorporation, a municipal power district may be created for that municipality under this chapter upon declaration of the vote by the municipal officers, provided that the total number of votes cast for and against the incorporation equals or exceeds 40% of the total votes cast in that municipality for all candidates for Governor at the previous gubernatorial election. If not, the proposed district is not created at that time. Upon certification of a favorable vote by the municipal officers, the commission shall approve formation of the district ~~if the commission finds that formation would be in conformance with the requirements of this Title. Upon approval by the commission, the district is created and the commission shall file certification of that approval with the Secretary of State.~~

Sec. 3. 35-A MRSA §3904, sub-§4, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

4. Favorable vote. If, in each municipality, a majority of the legal votes cast on this question favor incorporation, a municipal power district may be created for those municipalities

under this chapter upon declaration of the vote of the municipal officers, provided that the total number of votes cast in each municipality for and against the incorporation equals or exceeds 40% of the total votes cast in the municipality for all candidates for Governor at the previous gubernatorial election. Upon certification of a favorable vote by the municipal officers, the commission shall approve formation of the district ~~if the commission finds that formation would be in conformance with the requirements of this Title. Upon approval by the commission, the district is created and the commission shall file certification of that approval with the Secretary of State.~~

STATEMENT OF FACT

This bill makes clear that the Public Utilities Commission must approve the formation of a new municipal utility district upon the favorable vote of a majority of the municipalities' voters.

The bill also establishes the policy of this State to encourage a free and competitive market for electrical energy, requires the Public Utilities Commission to give explicit consideration and weight to this policy in its decisions, and requires the commission to explain how its decisions promote this policy.

117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document **No. 283**

S.P. 107 In Senate, January 27, 1995

An Act Relating to the Joint Use of Equipment.

Reference to the Committee on Utilities and Energy suggested and ordered printed.

MAY M. ROSS
Secretary of the Senate

Presented by Senator MILLS of Somerset.
Cosponsored by Representative ROTONDI of Madison and
Representative: BAILEY of Township 27.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §711, sub-§5 is enacted to read:

5. **Service additions.** When service is provided in accordance with section 2102, subsection 2 and upon request of a utility, the commission shall require joint use of equipment and ensure that such joint use is consistent with the requirements of subsection 1, paragraphs A to C.

STATEMENT OF FACT

This bill requires the Public Utilities Commission to allow joint use of facilities when 2 or more utilities are providing service in the same municipality.

117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document No. 433

S.P. 172 In Senate, February 6, 1995

An Act to Reduce the Cost of Electricity and to Provide for Market Competition in the Production and Sales of Electricity.

Reference to the Committee on Utilities and Energy suggested and ordered printed.

MAY M. ROSS
Secretary of the Senate

Presented by Senator CLEVELAND of Androscoggin.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA c. 32 is enacted to read:

CHAPTER 32

MARKET COMPETITION IN ELECTRIC GENERATION DIVESTITURE

§3201. Policy; findings

The Legislature finds that free market competition among nonutility, independent generators of electricity has the potential for long-term benefits for electric utility ratepayers. While the Legislature recognizes that transmission and distribution services are most economically provided by regulated monopolies, it finds that there is no natural monopoly inherent in electric power generation. Accordingly, the Legislature finds it is in the best interest of ratepayers that electric utilities divest themselves of all utility generation assets by January 1, 2001. The Legislature also finds that divestiture should not alter the energy policy of this State to require least cost planning and encourage energy conservation, the economic use of fuel and the maximum efficient utilization of indigenous energy resources.

§3202. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Compensable legal interest. "Compensable legal interest" means any legal interest in a generation asset that divestiture causes to be injured or otherwise affected in a manner requiring compensation under the United States Constitution or the Constitution of Maine.

2. Divest. "Divest" means to dispossess of all proprietary interest in an asset by means of a sale or other conveyance for valuable consideration to a person who is not an affiliate of an electric utility, as determined pursuant to section 707.

3. Divestiture. "Divestiture" means the process by which an electric utility divests itself of generation assets or the result of that process.

4. Generation asset. "Generation asset" means any facility, plant or other asset used to generate electric energy. "Generation asset" does not include conservation or demand-side-management devices or facilities that are reasonably and economically severable as assets from facilities that

generate electric energy. "Generation asset" does not include any contractual rights or interests in any capacity of a facility or energy produced by a facility, including a qualifying facility, as defined in section 3303, subsection 7, that is not owned or operated by the electric utility or a person affiliated with the utility.

§3203. Electric utilities; divestiture plan

No later than June 1, 1996, each electric utility whose total sales of electric energy for purposes other than resale exceeded 300,000,000 kilowatt hours during any calendar year shall develop and submit to the commission a detailed plan to divest the utility of all generation assets. The divestiture plan must address, at a minimum, the following:

1. Asset valuation. Methodologies used by the utility for valuing generation assets under its plan;

2. Corporate finance issues. The nature of all restrictions in relevant bond indentures and other relevant corporate finance issues relating to divestiture and the means by which the utility proposes that these issues be addressed in an economical and timely fashion;

3. Minimum value. Estimates of the minimum price for which each generation asset, if sold separately, would need to be sold in order to protect the interests of ratepayers, shareholders and others with a compensable legal interest and the lowest reasonable price for which the generation assets, taken as a whole, would need to be sold in order to protect the interests of ratepayers, shareholders and others with a compensable legal interest;

4. Highest reasonable value. Estimates of the highest price for which the utility reasonably believes each generation asset could be sold if sold separately and an estimate of the total market value of all generation assets if divestiture of the assets is accomplished according to the utility's preferred strategy proposed under subsection 5;

5. Divestiture strategy. The utility's preferred strategy for divestiture. The utility shall provide a detailed evaluation of the short-term and long-term costs and benefits to ratepayers, shareholders and others with a compensable legal interest associated with each of the following possible divestiture strategies:

A. Packaging more marketable generation assets with less marketable generation assets;

B. Scheduling sales to take advantage of favorable market conditions or to avoid unfavorable market conditions;

C. Establishing competitive bidding procedures;

D. Developing a specialized negotiation process, distinct from or integrated with a competitive bidding procedure, designed specifically to generate an optimum sale price for generation assets while avoiding unnecessary delays in closing sales; and

E. Packaging the sale of a generation asset with a simultaneous agreement to purchase some or all of the asset's output.

6. Alternate strategies. One or more alternate strategies for divestiture and a detailed analysis of the risks and benefits of each alternate strategy as compared with the preferred strategy proposed under subsection 5;

7. Division of revenues and costs. Suggestions for, and justifications of, formulas for allocating divestiture revenues and transaction costs among ratepayers, shareholders and others with a compensable legal interest; and

8. Information ordered by commission. Any other relevant information required by the commission by rule or order.

§3204. Commission review and analysis

The commission shall review and analyze all plans submitted in accordance with section 3203 and shall recommend divestiture plans for all electric utilities. The commission shall make specific findings concerning the following:

1. Unified or separate plan. Whether a unified plan for the sale of generation assets by electric utilities is feasible or whether there are compelling reasons why each utility should proceed under one or more unique divestiture plans;

2. Risks and benefits. The nature and extent of the various costs, risks and benefits for ratepayers, shareholders and others with a compensable legal interest associated with each plan submitted by each utility pursuant to section 3203;

3. Regional considerations. Whether there are regional considerations, such as access to and membership in the New England power pool, as defined in section 4103, subsection 4, that should be factored into the adoption of any divestiture plan;

4. Federal laws. The extent to which federal laws, particularly the Federal Power Act, the Public Utility Regulatory Policies Act of 1978 and the Energy Policy Act of 1992, implementing rules and interpretive case law, may affect the following:

A. Utility divestiture;

B. Utility access to power and power markets after divestiture; and

C. Limitations on commission jurisdiction after divestiture; and

5. Creation of power market. The measures needed to be taken to create an adequate electric power supply market after divestiture.

The commission shall evaluate options for addressing any issues raised by this analysis.

The commission shall complete its analysis by June 1, 1997.

§3205. Rulemaking

The commission may adopt any rules necessary to implement the provisions of this chapter. In adopting any rule that imposes additional requirements on utilities submitting plans under section 3203, the commission shall act in a timely fashion to ensure that utilities have ample opportunity to complete their plans by the deadline established in section 3203.

§3206. Commission report and plans; committee reporting option

1. Commission hearings. Prior to submitting a report under this section, the commission shall hold at least 5 hearings in various locations throughout the State to take testimony on utility plans for divestiture submitted pursuant to this chapter.

2. Report. By January 1, 1998 the commission shall submit to the Legislature a report containing a summary of its findings under section 3204 and its recommended plan or plans for divestiture in accordance with the following.

A. The report must include a primary plan that will result in complete divestiture for each affected electric utility on or before January 1, 2001.

B. The report may contain alternate plans to achieve divestiture later than January 1, 2001 provided the report

includes a detailed discussion of why complete divestiture by that date is imprudent or otherwise unadvisable. The alternate plan or plans may provide for partial divestiture by January 1, 2001, no divestiture until some later date or no divestiture of certain generation assets or may include any other provisions or suggestions, provided that every deviation from the primary plan, offered pursuant to paragraph A, is identified and justified.

C. The report must include all draft legislation necessary to implement the plan or plans offered pursuant to paragraphs A and B.

D. The report must include any other information of which the commission believes the Legislature should be informed.

3. Utilities committee reporting option. The joint standing committee of the Legislature having jurisdiction over utility matters shall review the report submitted by the commission under this section and is authorized to report out a bill to the Second Regular Session of the 118th Legislature to implement a plan or plans that will achieve the purposes of this chapter and result in divestiture.

STATEMENT OF FACT

This bill establishes a process that is designed to result in divestiture by electric utility companies of generation assets.

Under this bill:

1. Electric utilities must submit to the Public Utilities Commission by June 1, 1996 a detailed plan for divestiture;

2. The commission must complete a review of the plans by June 1, 1997;

3. By January 1, 1998, the commission must have held hearings on the plans and must submit to the Legislature its report on divestiture. The report must include a plan for complete divestiture by January 1, 2001. The report may include alternate plans if the commission finds that complete divestiture by the year 2001 is imprudent; and

4. The Joint Standing Committee on Utilities is authorized to report out a bill to the Second Regular Session of the 118th Legislature in 1998 to achieve divestiture.

117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document **No. 492**

S.P. 183 Received by the Secretary, February 7, 1995

An Act Relating to Authority of Governing Boards of Consumer-owned Electric Utilities.

Referred to the Committee on Utilities and Energy and ordered printed pursuant to Joint Rule 14.

MAY M. ROSS
Secretary of the Senate

Presented by Senator HARRIMAN of Cumberland.
Cosponsored by Representative KONTOS of Windham and
Representatives: BAILEY of Township 27, LIBBY of Kennebunk, REED of Falmouth.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §3506 is enacted to read:

§3506. Exercise of powers by consumer-owned electric utilities

1. Board composition. If a consumer-owned electric utility is governed by a board composed of at least 3 members, elected by the customers or voters within its service area, that board may exercise the powers of the Public Utilities Commission under this Title and any other provision of law. Upon deciding to exercise those powers the board shall inform the commission. The commission may continue its consideration of any matter before it upon receipt of notice of the decision. One year after making the decision to exercise those powers, a consumer-owned utility may petition the commission to terminate the exercise of powers under this subsection and is authorized to do so by the commission.

2. Termination of board authority. If 15% of the customers of the consumer-owned electric utility or 1,000 customers, whichever is less, file petitions with the consumer-owned utility and the commission requesting termination of the board's authority to exercise the powers described in subsection 1, the commission may terminate the board's authority if the commission finds that termination is required by those customers. The commission shall notify the electric utility of its decision. The electric utility may challenge the petitions as provided in section 3502, subsection 10.

3. Adoption of rules. The board of a consumer-owned electric utility may adopt rules of the commission concerning electric utilities or any part of those rules for the board's own terms and conditions of service.

STATEMENT OF FACT

This bill gives consumer-owned electric utilities with elected boards the option to exercise certain powers of the Public Utilities Commission under the Maine Revised Statutes, Title 35-A.

117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document **No. 866**

H.P. 643 House of Representatives, March 21, 1995

An Act to Establish a Reduced Rate for Electric Utility Consumers on Life-support Equipment.

Reference to the Committee on Utilities and Energy suggested and ordered printed.

JOSEPH W. MAYO, Clerk

Presented by Representative ADAMS of Portland.
Cosponsored by Representatives: BUNKER of Kossuth Township, CHARTRAND of Rockland, GATES of Rockport, GERRY of Auburn, GREEN of Monmouth, HEESCHEN of Wilton, JONES of Bar Harbor, KILKELLY of Wiscasset, O'NEAL of Limestone, TREAT of Gardiner, TRIPP of Topsham, WATSON of Farmingdale, WHEELER of Bridgewater, Senators: MICHAUD of Penobscot, PINGREE of Knox.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §703-A is enacted to read:

§703-A. Energy rates for electricity users depending on life-support equipment

1. Rate reduction. The commission shall establish a 50% reduction in energy charges by an electric utility for residential usage associated with life-support equipment in the home.

2. Qualifications for the reduction. To qualify for the reduction, a customer must file an affidavit, on a form approved by the commission and signed by a physician, with the electric utility stating that, due to a medical condition, that customer or a member of the household must rely on life-support equipment on a semipermanent or continuous basis and identifying the type and manufacture of that equipment.

3. Rules for calculating rate reduction. Within 120 days following the effective date of this section, the commission shall establish rules governing the form of affidavits, identifying eligible equipment, selecting a method for calculating the portion of household usage eligible for reduction and selecting a method for applying credits to eligible customers' bills.

STATEMENT OF FACT

This bill directs the Public Utilities Commission to establish reduced utility rates for those on life-sustaining equipment in their homes. It is modeled on the reduced rate given to people with hearing or speech impairments for long-distance telephone equipment and the telephone system. This bill establishes a 50% reduction in the electricity rate for people providing an affidavit indicating that the use of the equipment is necessary for life-support.

117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document **No. 886**

H.P. 663 House of Representatives, March 21, 1995

An Act to Improve the Business Climate in the State by Making Power Available at a Lower Rate.

Reference to the Committee on Utilities and Energy suggested and ordered printed.

JOSEPH W. MAYO, Clerk

Presented by Representative VIGUE of Winslow.
Cosponsored by Representatives: ADAMS of Portland, BAILEY of Township 27, BERRY of Livermore, BRENNAN of Portland, BUCK of Yarmouth, CAMERON of Rumford, CAMPBELL of Holden, CHARTRAND of Rockland, CLARK of Millinocket, CLUKEY of Houlton, DAMREN of Belgrade, DiPIETRO of South Portland, DRISCOLL of Calais, FARNUM of South Berwick, FISHER of Brewer, GATES of Rockport, GIERINGER of Portland, HICHBORN of LaGrange, JACQUES of Waterville, JONES of Bar Harbor, JOSEPH of Waterville, JOY of Crystal, KEANE of Old Town, KERR of Old Orchard Beach, KILKELLY of Wiscasset, LaFOUNTAIN of Biddeford, LAYTON of Cherryfield, LIBBY of Kennebunk, MARSHALL of Eliot, MAYO of Bath, MURPHY of Berwick, NICKERSON of Turner, POULIN of Oakland, POULIOT of Lewiston, POVICH of Ellsworth, REED of Dexter, RICKER of Lewiston, SAMSON of Jay, SIMONEAU of Thomaston, SIROIS of Caribou, STROUT of Corinth, TRUMAN of Biddeford, TUFTS of Stockton Springs, TYLER of Windham, UNDERWOOD of Oxford, WHEELER of Bridgewater, Senators: BEGLEY of Lincoln, CAREY of Kennebec, CASSIDY of Washington, STEVENS of Androscoggin.

3. Permits a utility to charge a fee for its transmission and wheeling services to cover direct costs.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA c. 31, sub-c. VIII is enacted to read:

SUBCHAPTER VIII

BUSINESS ENTITIES

§3211. Sale to business entities

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Business entity" means a new or existing firm, partnership or corporation doing business and receiving electric power in the State.

2. Sales. Notwithstanding any other provision of this Title, an electric utility may negotiate and enter into a contract for the sale of and may sell electricity to a business entity without review by the commission.

3. Retail wheeling for economic development. Notwithstanding any other provision of this Title, for the purpose of economic development and upon application by a business entity to the Governor, the Governor may require that an electric utility provide retail wheeling services to the business entity in order to allow the business entity to obtain electric power from any source.

4. Transmission fees for wheeling. Upon approval by the commission, a utility may charge a fee for transmitting or wheeling electricity via its facilities to a business entity for electricity that is purchased pursuant to this section. The fee charged by the utility for transmitting or wheeling electricity to a business entity may not exceed the cost directly attributable to transmitting or wheeling electricity to that business entity.

STATEMENT OF FACT

This bill:

1. Permits electric utilities to enter into contracts and to sell power to business entities in this State without review by the Public Utilities Commission;

2. Permits the Governor to require an electric utility to provide retail wheeling services to a business entity; and

APPENDIX I

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