

Approved: Feb. 17, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson at 1:30 p.m. on February 9, 1998 in Room 531-N of the Capitol.

All members were present except:
Sen. Hensley was excused

Committee staff present: Lynne Holt, Legislative Research Department
Mary Torrence, Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
none

Others attending: See attached list

Sen. Ranson called the committees' attention to Minutes of the Meeting for January 28 and 29 (Attachment 1). Sen. Clark made a motion the Minutes be approved, and it was seconded by Sen. Salisbury; the Minutes were approved.

Sen. Ranson reminded the committee of the KCCI Forum at the Expocentre tomorrow on retail wheeling and encouraged their attendance; there will be no committee meeting.

Sen. Ranson then asked Mary Torrence to brief the committee on:

SB 502-concerning retail electric bills to consumers; providing for disclosure of certain components

Ms. Torrence referred to the bill and Section 1, Subsections (1) through (8) and called attention on Page 2, Line 11, (d) and discussed components required to be disclosed. She stated at the present time, utility costs are shown on the bill in a single package; however, this proposal, under deregulation, would require charges to be "unbundled", or pulled out and listed separately. Consumers would then be able to determine the exact amount being charged for items enumerated in the bill. Sen. Ranson asked if there is a requirement in the bill that coops and municipals follow Corporation Commission guidelines. Ms. Torrence answered there is not; that the Corporation Commission has jurisdiction outside the three mile limit, and those come under the jurisdiction of the Commission's Rules and Regulations.

Sen. Ranson then asked Lynne Holt to give the committee information on other states, their status and how the issue of unbundling was handled. Ms. Holt distributed copies detailing legislation in various states and those states bringing deregulation under commission orders (Attachment 2). She emphasized those states that required unbundling and briefly told in what manner costs were unbundled. She also pointed out that one state, Illinois, has a working group appointed to develop consumer education materials. Sen. Ranson commented that billing and metering could be set out for competitive bid and that a company could justify hiring a service to do that; in fact, some are already doing that. Sen. Salisbury pointed out that none of the states have had unbundling requirements in effect very long to see what the results might be and commented that members of the committee have seen the downside of explicit billing.

Ms. Holt continued by distributing a fact sheet entitled "Electric Utility Restructuring and the Low-Income Consumer" (Attachment 3) and called attention to the second page, "Unbundling rates and services". It points out the fact that unbundling rates may represent a significant increase, which will be especially hard on those having difficulty with payments or are low income consumers. The following paragraph discusses the proliferation of fees which is prevalent in the banking industry and came about through deregulation in the 1980's. Sen. Ranson then asked Ms. Torrence for clarification - if the Corporation Commission has jurisdiction over municipals, and she answered that under this bill the Corporation Commission would have jurisdiction over municipals which are more than three miles outside the city limit, and then they are defined as a public utility. Sen. Ranson added that could create two billings.

Sen. Ranson then referred to Page 2 of the bill and the universal service charge, which could include many

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON UTILITIES, Room 531- -N, Statehouse, at 1:30 p.m. on February 9, 1998.

charges when unbundling takes place and noted that under this bill, the effective date would be January 1, 2000. Ms. Holt added that some of the surcharges may be included in strandable benefits. Sen. Ranson stated that the committee will consider what charges to include in the unbundling process. She also noted that some of the states have been required to provide educational material to consumers, which they eventually pay for. The committee also discussed the cost of furnishing information to the consumers and how that has been addressed in other states. Sen. Brownlee added that implementation charges borne by companies may be rolled into stranded costs which will eventually be paid by the consumer. Sen. Ranson added that is a good reason to consider the unbundling question before going into full restructuring. Sen. Clark pointed out that there are no requirements in the bill for low income supplements.

Sen. Ranson announced the committee will hear from the Corporation Commission regarding the "cold weather" rule and also about LEAP, which is a federal program administered by SRS, on Wednesday.

Meeting adjourned at 2:25.

The next meeting is scheduled for February 11, 1998.

Approved: Feb. 9, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson at 1:30 p.m. on January 28, 1998 in Room 531-N of the Capitol.

All members were present except:
Sens. Jones, Hensley and Lee were excused

Committee staff present: Lynne Holt, Legislative Research Department
Mary Torrence, Revisor of Statutes
Jeanne Eudaley, Committee Secretary
Chris Courtwright, Legislative Research Department

Conferees appearing before the committee:
none

Others attending: See attached list

Sen. Ranson announced the committee will hear a briefing regarding:

SB 436-establishing the joint committee on taxation of public utilities to study and make recommendations regarding taxation of deregulated electric generation public utilities

She called on Mary Torrence to briefly explain the bill, and she stated the bill establishes a joint committee to study and analyze tax implications of deregulation and specifically the tax impact on the state economy. She explained the bill is a part of the Retail Wheeling Task Force Report and that the date of expiration for the committee has been changed to July 1, 1999, so that the committee could assist and direct legislation during the next session. Ms. Torrence referred to the fiscal note attached to the bill, and stated that the report from the committee is due the first day of next session. Sen. Ranson stated another change is in the make-up of the committee to include legislators only, since they are the ones who will be debating it and have to vote on it; that she expects other members of the Task Force will attend most meetings and will be present to have input into the legislation.

Sen. Ranson then referred to an article entitled "Tax implications seen as "sleeping giant" of industry restructuring", which appeared in the Electric Utility Week publication, dated December 22, 1997 - copies were distributed to committee members.

Sen. Barone questioned whether the bill includes all utility taxes, or if the intent is to consider electric utilities only - he was under the impression it would include all utilities. Sen. Ranson clarified that this bill will relate to electric utilities only.

Sen. Ranson then introduced Chris Courtwright, of the Legislative Research Department, who briefed the committee on **SB 436 (Attachment 1)**. Two issues he emphasized were that he believes the changes they are considering will have to be constitutional, not statutory changes. Sen. Ranson stated the bill from the Task Force does change the statutory language and exempts competitive electricity providers from the definition of a public utility. He also discussed with the committee the tax structure and how deregulation will affect it, central assessments vs. local assessments and changes in looking at utility inventories and their tax structure. Mr. Courtwright referred to assessment levels and classifications (**Attachment 2**) and went over those with the committee. Mr. Courtwright explained tax shifts in the mill assessments across the states and how that differs from county to county and the impact they will feel with deregulation. He also discussed the fact that assessed valuation could drop an estimated \$30 million statewide and referred to the fiscal note attached to the bill.

Mr. Courtwright also discussed corporate income taxes and establishing nexus, business income and local and franchise taxes. He pointed out the variance from county to county and a discussion of county local and sales taxes and the fact that some counties have no sales taxes. He emphasized the importance of a level playing field so there is no tax advantage to some providers. He compared how taxes are assessed and how that varies from state to state. Two other taxes he mentioned are unemployment compensation tax and taxes on intangible assets. He raised other legal questions regarding the tax issue and how complex the issue is and the

Senate Utilities
2-9-98
1-1

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON UTILITIES, Room 531- -N, Statehouse, at 1:30 p.m. on January 28, 1998.

problem of a constitutional amendment. He also stated the bill has prompted Shirley Sicilian in the Property Valuation Department to come up with a hypothetical firm model.

In answer to a question from Sen. Barone regarding taxes levied on generation, except for agriculture and residential use, and if taxes should be considered with the bill, Mr. Courtwright indicated it is a policy decision; but it seems that the tax situation needs to be worked with the bill, and that the Task Force Report has given priority to a level playing field.

Sen. Ranson announced that tomorrow the committee will hear from Chris McKenzie and Shirley Sicilian, who will have tax projections.

Sen. Ranson referred the committee to Minutes of the meetings of January 20 and 21. Sen. Clark made a motion to approve the Minutes, and it was seconded by Sen. Salisbury; the Minutes were approved.

Meeting was adjourned at 2:20.

The next meeting is scheduled for January 29, 1998.

Approved: Feb. 9, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson at 1:30 p.m. on January 29, 1998 in Room 531-N of the Capitol.

All members were present except:
Sen. Hensley was excused

Committee staff present: Lynne Holt, Legislative Research Department
Mary Torrence, Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
Shirley Sicilian, Director, Policy & Research, Department of Revenue
Chris McKenzie, Executive Director, League of Municipalities

Others attending: See attached list

Sen. Ranson opened the meeting by introducing two members who served on the Retail Wheeling Task Force, Earl Watkins, Sunflower Electric Power and Walker Hendrix, representing the Citizen's Utility Ratepayer Board (CURB). Sen. Steffes then introduced three pages from his district who are assisting the committee today.

Sen. Ranson announced the committee will hear a briefing today on **SB 436-Establishes Joint Committee on taxation of public utilities for study and recommendations; regarding taxation of deregulating electric generation.**

Sen. Ranson introduced Shirley Sicilian, who distributed copies of a memo to Chairman Carl Holmes dated July 17, 1997, regarding tax implications (Attachment 1) to the committee and explained it summarizes tax issues tax type by tax type. She announced the information she will give to the committee today will summarize tax issues stakeholder by stakeholder (Attachment 2). After her presentation, members asked questions regarding how separate companies are treated, such as KEPCO and Sunflower, and are they treated as one company? Ms. Sicilian stated for sales tax purposes they are treated as one company and that the statutes don't address the situation, which causes confusion. They also discussed cost recovery, companies divesting vs. unbundling and exemptions for commercial and residential properties. She stressed the importance of clarifying several tax issues that are involved in deregulation.

Sen. Ranson then introduced Chris McKenzie, who began his presentation by discussing local sales tax vs. state sales tax and referred to a chart on Page 2 of his prepared text (Attachment 3). He emphasized that the greater proportion of local sales and use tax receipts are derived from electricity and gas rather than at the state level. Mr. McKenzie continued by discussing policy issues relating to sales and use tax and emphasized the importance of accurate information and stated he has great concern for how taxes will be collected under deregulation. Sen. Ranson asked questions regarding the California power exchange and ISO and if its purpose is to collect this information. Mr. McKenzie stated the importance of utilizing accurate information regarding volume and pricing information. He continued by discussing franchise fees and the fact that it is common for the franchise fee to be passed on to the consumer; that the Corporation Commission allows it to be passed on. He also discussed nexus, unbundling, consumer education and the distribution of charges. Mr. McKenzie referred to a list of municipal electric utilities and other data (Attachment 4) and to Bulletins No. 643 and 644 regarding electric utilities and electric franchise fees (available from the League of Kansas Municipalities). He closed by stating the League's support for **SB 436**.

Sen. Ranson stated the importance of a careful study of tax issues and serious consequences relating to deregulation. She announced the committee will have a hearing Monday on the bill.

Meeting adjourned at 2:30.

Next meeting will be February 2, 1998

February 9, 1998

STATES WITH BILL UNBUNDLING LEGISLATION/COMMISSION ORDERS

Legislation

California. Part of comprehensive restructuring legislation (1996 AB 1890)—utilities must disclose the following components on electric bills: (1) the total charges associated with transmission and distribution, including that portion comprising research, environmental, and low-income funds; and (2) the total charges associated with generation, including the competitive transition charges.

Idaho. Not part of comprehensive restructuring legislation (1997 S.B. 399)—electric utilities with 1,000 or more customers, cooperatives, and municipal corporations must separate cost information among utility functions, consisting, at a minimum, of generation, transmission, and distribution services and other categories as the Commission may deem relevant. (The Commission's determination of other categories applies only to those utilities under the Commission's jurisdiction.)

Illinois. Part of comprehensive restructuring legislation (1997 H.B. 362)—each electric utility must file a delivery services tariff with components of delivery services defined in the bill as: "those services provided by the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services." The Commission has jurisdiction to determine the extent to which such services should be offered on an unbundled basis. A working group must be formed by the Commission to develop consumer education materials. These materials must include concise explanations and descriptions of various specified items, including the components of a bill that could be received by a customer taking delivery services.

Maine. Part of comprehensive restructuring legislation (1997 H.P. 1274-L.D. 1804)—beginning January 1, 1999, electric utilities must issue bills that state the current cost of electric capacity and energy separately from distribution and transmission charges and other charges for electric service. By January 31, 1998, each electric utility had to file with the Commission a bill unbundling proposal. The Commission must complete a review of those proposals and adopt a rule establishing unbundled bill requirements by July 1, 1998. The Commission must determine each utility's costs of providing electric billing and metering services that are reflected in consumer rates, including capital costs, depreciation and operating expenses and taxes, and will separate this portion of the consumer rate into a separate charge.

Massachusetts. Part of comprehensive restructuring legislation (1997 H.B. 5137)—beginning January 1, 1998, all electric and gas bills sent to retail customers must be unbundled to separately reflect the rates charged for generation, transmission, and distribution services,

*Senate Utilities
2-9-98
2-1*

as well as any other charges added pursuant to law. Any transition charges must be reflected separately on bills as of March 1, 1998.

Montana. Part of comprehensive restructuring legislation (1997 S.B. 390)—electrical bills must disclose at a minimum: (1) distribution and transmission charges; (2) electricity supply charges; (3) competitive transition charges; and (4) universal system benefits charges. Local governing bodies of electric cooperatives and municipal electric utilities will retain authority for those utilities regarding information contained in customer bills.

Nevada. Rate unbundling is not addressed in 1997 A.B. 366, Nevada's comprehensive restructuring legislation.

New Hampshire. Part of comprehensive restructuring legislation (1996 H.B. 1392)—when customer choice is introduced, services and rates must be unbundled to provide customers clear price information on the cost components of generation, transmission, distribution, and any other ancillary charges. The Commission's restructuring order implementing the bill requires utilities to file with the Commission cost-of-service studies that unbundle generation, transmission, and distribution. The distribution revenue requirement within the cost-of-service study must be further subdivided to reflect, at a minimum, metering, billing, and customer services.

Oklahoma. Part of comprehensive restructuring legislation (1997 S.B. 500)—when customer choice is introduced, rates must be unbundled to provide clear price information on the components of generation, transmission, distribution, and any other ancillary charges. Electric bills for all classes must be unbundled, using line itemization to reveal the various component costs of providing electrical services. Charges for public benefit programs currently authorized by statute or the Commission, or both, must be unbundled and appear in line item format on electric bills for all customer classes.

Pennsylvania. Part of comprehensive restructuring legislation (1996 H.B. 1509)—the Commission must require the unbundling of electric utility services, tariffs, and customer bills to separate the charges for generation, transmission, and distribution. The Commission also is authorized to require the unbundling of other services.

Rhode Island. Part of comprehensive restructuring legislation (1996 H. 8124B)—on or before January 1, 1997, each utility had to file with the Commission unbundled rates which separately identify costs for use of transmission and distribution facilities. Such unbundled rates had to include transition charges and just and reasonable terms, conditions, and procedures for interconnection with small scale generating units located on the distribution system.

Commission Orders

Arizona. (Part of Rules and Regulations, December 26, 1996)—by December 31, 1997, each utility must file unbundled service tariffs to provide the services listed below to all eligible purchasers on a nondiscriminatory basis: distribution services; metering and meter reading services; billing and collection services; open access transmission service (as approved by FERC,

if applicable); ancillary services in accordance with FERC Order 888¹; information services, such as provision of customer information to other electric service providers; other ancillary services necessary for safe and reliable system operation. The Commission must review and approve rates for services outlined above before such services can be offered.

Maryland. Part of the Public Service Commission's order on the Provision and Regulation of Electric Service, December 3, 1997—the Commission requires the investor-owned utilities to bill all their customers using unbundled rates by December 1, 1998, the beginning of the enrollment period for the initial phase-in period. Staff and the industry must review the components on the bill and advise the Commission as to whether they agree by June 5, 1998. If the parties cannot agree, a hearing will be held as to whether the filings are based upon proper cost of service data and cost allocation principles, and whether the rate components have been properly developed to avoid anticompetitive consequences. Four components to be included in bills are: (1) electric supply rate; (2) transmission service rate; (3) distribution service rate; and (4) metering and billing rate. Municipal utilities will not be required to unbundle rates until their customers obtain retail choice. Electric cooperatives will have to unbundle at a time set cooperatively by the cooperatives and the Commission staff, subject to Commission approval.

Michigan. (Part of Order Restructuring the Electric Utility Industry, June 5, 1997)—this order required Consumers Energy Company and the Detroit Edison by June 19, 1997 to file revised tariff sheets unbundling rates for generation and service delivery in accordance with the order. The Commission issued an order on October 29, 1997 to adjust both companies' filed tariffs to eliminate conflicts with the Commission's June 5, 1997 order and with the requirements of FERC for electric transmission.

New Jersey. (Part of Order Restructuring the Electric Power Industry in New Jersey: Findings and Recommendations, April 30, 1997)—this order requires utilities to file unbundled rates with the New Jersey Board of Public Utilities. The filings may be accepted, rejected, or modified by the Board. The implementation of unbundled rates approved as a result of the filing would be concurrent with the date retail competition is introduced in a utility's service area. The filing would, at a minimum, include a separate charge for customer, distribution, transmission, production, and societal benefits services for each existing customer rate class. The societal benefits charge (SBC) will include costs associated with Demand-Side Management (DSM), gas plant remediation, nuclear decommissioning, and societal programs, including winter moratorium, "bad debt" customers, low-income assistance and weatherization, and existing late payment and deposit policies. To the extent that certain costs to be collected from the SBC cannot be readily identifiable and separated from the bundled cost of utility service, a utility may propose to keep such costs bundled within the distribution charge. There also is a provision to add a market transition charge once unbundling begins.

New York. Rate unbundling is not addressed in the Public Service Commission's electric utility restructuring opinions.

¹ These services include: (1) scheduling, system control, and dispatch; (2) reactive supply and voltage control from generation sources service; (3) regulation and frequency response service; (4) energy imbalance service; (5) operating reserve-spinning reserve service; and (6) operating reserve--supplemental reserve service.

Vermont. Rate unbundling is not addressed in the Public service Board's restructuring plan, *The Power to Choose: A Plan to Provide Customer Choice of Electricity Suppliers* (December 30, 1996).

Attach. 3
Lyons

ELECTRIC UTILITY RESTRUCTURING AND THE LOW-INCOME CONSUMER

Facts on File: No. 8

Fisher, Sheehan & Colton, Public Finance and General Economics

October 1997

What's at Risk: The Anticipated Impact on Rates

One impact of a restructured electric industry is the likely impact that low-income customers will pay increased bills for electricity.

Cost-of-service vs. Value-of-Service Rates

Understanding two concepts will help explain this probable rate impact. The first concept is called cost-of-service ratemaking. Under cost-of-service ratemaking, which has historically been the norm under state regulation, state regulators seek to match the rates charged to consumers with the costs incurred in providing those consumers with electricity. There is, in other words, some element of causation. If a customer class causes the utility to incur certain costs, that class pays those costs.

The second concept is called value-of-service ratemaking. Under this approach, prices are set equal to what the market will bear rather than being based on cost causation. Value of service ratemaking takes into explicit consideration the alternatives available to customers. If fewer alternatives are available, the customers will be "willing" to spend more to retain service and prices are thus set higher. Given the lack of alternatives for most low-income consumers, the "value" of electric service is higher and prices are set accordingly.

The reasons that low-income consumers have the fewest alternatives will be familiar to low-income energy service providers. Low-income households tend to be tenants. As a result, they do not have the authority to make energy saving home improvements. In addition, since energy savings go to tenants, landlords do not have the incentive to do so. Low-income consumers do not have the money to invest in energy savings

devices. It makes no difference to a poor person that spending \$100 will save \$130 if he or she does not have the \$100 with which to begin. Low-income consumers do not generally have substantial discretionary energy use. They don't have things to "turn off" in order to save energy.

If the move to value-of-service ratemaking means that captive customers will pay more, which it does, then low-income consumers are likely in line for a series of price increases.

Fixed vs. Variable Costs

A more subtle form of passing higher costs on to captive users (including low-income consumers) is through a reallocation of fixed and variable costs. The "fixed" costs of a utility system are those costs that do not vary based on the amount of electricity sold. They include headquarters buildings, power plants, executive salaries, and the like. In contrast, the "variable" costs of a utility are those that increase or decrease directly with the amount of energy sold. Thus, for example, fuel costs are variable costs; if you sell more electricity, the utility must burn more coal to produce the power.

Under principles of cost causation, variable costs are charged to the consumers who cause the utility to incur the costs. In contrast, however, there are no accepted means of allocating fixed costs. Accordingly, as the utility industry becomes more competitive, it is likely that the utilities will charge their larger customers close to their variable costs as a means to keep prices down and retain those customers as customers. The result, however, is to allocate the fixed costs of the system to captive customers. As a

Senate Utilities
3-1
2-9-98

result, customers with fewer alternatives (such as low-income customers) will bear the largest share of fixed costs while those classes with more alternatives will be assigned a smaller share. They can thus expect to see increases in price even when the total costs of the utility remain stable or decrease.

Unbundling Rates and Services

Aside from increases in their base rates, one additional way in which low-income consumers will likely face increased prices is through the "unbundling" of rates and services. Debundled service fees can represent a significant increase in "rates" to customers even if base rates remain the same or decrease. Customers who are facing payment troubles, for example, can nonetheless still face significant increases in the monies which they owe to a utility if either the utility debundles existing elements of service and institutes new fees for those individual elements, or, if the utility institutes increases in existing fees for certain elements of service other than those paid for through base rates.

Look What's Happened with Banks

Unbundling is not new to consumers. Banks are the masters of "unbundled" fees. Most consumers have experienced fees for ATM machines that were not previously imposed. Fees are charged to use credit cards. With some banks, fees are charged to have a consumer's checks returned to them in their statement each month (rather than photocopies of the checks).

In a competitive industry, these fees need not be cost-based. Since bank deregulation in the 1980s, fees charged by banks have been skyrocketing. Recent newspaper headlines proclaim: "Banks Begin to See Gold in Bounced Checks." Reports state that non-sufficient funds (NSF) fees have risen from an average of \$15.11 in 1990 to an average fee of \$19.35 per check by 1993. The large banks are charging fees averaging 971% more than the processing costs. Researchers have estimated that banks earned in excess of \$1 billion in 1994 from NSF

fees alone. Of course, banks charge other fees as well.

The Utility Counterpart

The utility industry is already beginning to adopt these banking practices. One Vermont utility has proposed to charge consumers a fee every time they are sent a shutoff notice. A Pennsylvania utility proposed charging a fee for "field collection calls," where a company representative personally visits your home and collects money while there.

Other fees that can be expected include fees to pay for the negotiation of a deferred payment plan, fees to cash third party checks at company offices, and fees to have a utility check your bill if you dispute the amount that you have been billed.

Summary

Predictions that competition in the electric industry will result in price savings to all consumers fail to take into account the impact of competition on low-income customers. Whether it is through increases in base rates, or increases in fees for unbundled services, it is likely that a competitive electric industry will impose higher prices on low-income consumers.

Roger Colton is an attorney and economist in Belmont, Massachusetts. Colton has been hired to analyze electric restructuring issues by clients ranging from the U.S. Department of Energy (DOE), to the National Association of Regulatory Utility Commissioners (NARUC), to the Edison Electric Institute, the national electric utility industry association. Colton has also worked for numerous state agencies and local community-based organizations on restructuring issues.

Roger D. Colton
Fisher, Sheehan & Colton
Public Finance and General Economics
34 Warwick Road, Belmont, MA 02178
617-484-0597 *** 617-484-0594 (FAX)
rcolton101@aol.com (E-MAIL)
