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Congress and Deregulation: Federal Legislative Issues Past, Present and Future.

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I. Bill Robinson

{1} I am Bill Robinson, and I am pinch-hitting for Mark La Fratta. Mark did something that caused him to have to go to Gary, I am not sure what it is. Perhaps, Mr. Brown will be able to tell us later on. In any event, it is a pleasure to be here. A couple of Saturdays ago, I was out sailing in an old boat I have, and we had wonderful winds. We were wasting in an area on the Rappahannock that I was not very familiar with, and we were just about to make our last tide in the fifth of six legs of the race, when we ran aground so badly, and so far, that it looked like one of those photographs after a hurricane, with the boat keeled over. Eventually, somebody came by and yelled over from his boat, "It sure is a lot easier standing up at a podium in a courtroom, than what you are doing, is it not, my boy." It was a bailiff in the Federal Judge's Courtroom in Richmond, and the general proposition he used was correct. And, it is with a little trepidation that I come because you all are experts at this, and the panelists are certainly experts, and I am simply going to be introducing them.

{2} Let us begin on this part of the program, which focuses on federal legislation, with what has happened in other industries, which have formally been subject to substantial regulation, and have moved to deregulated status, what we might be able to expect based on those lessons, and what we have to look forward to.

{3} Our next speaker is Richard Blackburn. Let me mention at this point, that there is a full biography of all our speakers behind the material in the blue tab of your binder. Mr. Blackburn comes to us as Executive Vice President and Federal Counsel of Duke Energy. Before that, he had considerable experience with Nynex, and served as president of their Worldwide Communications System. He, now, among other duties, is responsible for Duke's Demograhpic Affairs Program. I would like to welcome him, and to tell him that I appreciate his being here, and look forward to his remarks.

II. Richard Blackburn

Executive Vice President and General Counsel, Duke Energy Corporation

{4} Good afternoon, the first thing I want to do is disclaim anything associated with being an expert in gas and electric industries. I am new to this industry. I became General Counsel to Duke Energy in November. I spent my entire career before that position, in the telecommunications industry, which I will talk a little bit about this afternoon. I am scrambling to get up-to-speed on the low-down of gas and electric matters, and am at the dangerous point in my learning curve, where a few days a week, I operate under the illusion that I have a critical mass of knowledge. So, I really understand some things from the point of view of a novice, and I have lots to learn. What I would like to do this afternoon, is talk a little bit about what we believe is the role of the states and the federal government, as we look at restructuring the electric industry. I will then ground that discussion, if I could, in some of the things I saw over a couple of decades in the telecommunications industry. This will highlight a couple of themes that I will come back to several times in my talk.

{5}One theme is that, it is best to stay closest to the environment you are restructuring, and not shift your focus at all to Washington. When you look at what we have today in the telecommunications industry, you realize that things are very complex in the 1996 Telecommunications Act, and people are debating whether or not it is working. I will be suggesting that it is not the model you should be using in the electric restructuring.

{6} The second point is that, as we go through this process, somebody needs to make sure they are talking to customers along the way. Do customers really want this? Another theme in the telecommunications world, is the restructuring of the telecommunications industry, or that the deregulation was basically hatched in a conference room in a settlement of trustees, and there was not a single customer in the room. The customers woke up the next day and were greeted with the prospect of multiple long-distance telephone companies, and they said, "why?" We have struggled for fifteen years since then, with customers wondering if things have really improved. Now, that is a brief opening.

{7} What we think is that the electric industry should continue down the path it is traveling today, or restructuring all of this basically according to the models. It is a distribution piece, a transmission piece, it is a generation piece. It would be best to proceed the way it is now, and that is largely on a state-by-state, very local focus. The generation piece can, and should be regulated. Customers should have the choice for generation, and things happen in generation that make that logical. There are technology changes, there are cost improvement changes, and there are environmental improvement changes. All of those things occurring now have made it natural, good, and timely for the deregulation of generation. Distribution, we believe, should be regulated at the local level, and transmission, we believe should be regulated at the federal level, at first. The structure of all that and the way customers are treated in all that process, ought, in our view, to be perceived on a state-by-state basis. Unlike telecommunications, unlike other industries, electric generation and distribution is an intensely local business. It operates at the local level, as electric plants can build at the local level, they get built as part of the county development efforts by the states. So, you can see that it is an intensely local level process, and ought not to be restructured anywhere except at the local level. But, to do that, you need a few things out of the federal government, but only a few, and a few of them are outlined in the conference materials.

{8} First, you need legislation to clarify what is the status of FERC (Federal Energy Regulatory Commission) regulation for electric transmission. What is the dividing line between transmission and distribution? Where do you draw that line? It certainly needs to be a matter of national policy. If that line-drawing process happens incorrectly or inappropriately, there would be chaos. We support having limited clarification of FERC jurisdiction to help with the demarcation point between transmission and distribution. Likewise, we support the movement that is already underway in the country for proper reform. Section 210 of PUHCA, which causes distribution companies to buy specialized forms and generation, dependent upon whether it is a reason for consented purchase, from greed power, or whatever, that is simply an idea whose time has passed. Certainly, the time has passed in a model that deregulates generation, and we would look for proper reform to clean that up.

{9} The whole issue of stranded costs is one that is severe in this industry. It is one that has to be addressed as it is, in very simple terms. What portion of the cost structure of a currently integrated, monopolistic, local electric company will not be recovered when customers are lost to competitors? Those power plants and distribution systems were built under a compact, under which, the regulators assume that you would retain your customer base for the life of the plant being built. As competition comes into markets, in an orderly way, that contract, that assumption, that preface is altered, and certain portions of your customers are going to be lost to competitors. That is natural, and that is good. You cannot, however, be a shareowner with the obligation of covering all of those stranded costs, because it is contrary to the premise of the investment that was made at the time the power plants and distribution facilities were built. So, we support the effort that is already underway to have national policy declared at that level, along with some congressional legislation.

{10} Fourthly, we support the Public Utility Holding Company Act ("PUHCA") reform, that is simply a statute to modify or repeal PUHCA, that is already in existence. It fosters vertical integration in the electrical industry, which is antithetic to the restructuring we are experiencing today, and certainly PUHCA needs to be repealed. Lastly, there is this whole fundamental issue of power that I will deal with in the Question and Answer session, if we have time.

{11} We have in place today, the municipals and federally-supported electric generation and distribution facilities that have different forms of subsidized debt, different forms of public policy of health behind them that need to be rationalized. There are going to be competitors in the marketplace, and they will need to be on an even-footing with all the competitors. That is the kind of a basic outline of the limited, enabling legislation that we view as important from Washington, and nothing more. The rest should proceed, in our view, on a state level.

{12} Let me turn to the business of why I think there are lessons in the telecommunications world that help support the view that less is more, when it comes to the role of Washington in the restructuring of an industry like the electric power industry. I will just mention a quick history here, that I assume most of us know, so I will go over it quickly.

{13} The telecommunications industry has restructured and become less regulated - not totally deregulated today - over the last tortuous thirty-year period. It is hard to imagine that it has been that long. It was in the fall of 1967 that the Federal Communications Commission, ("FCC") first licensed MCI to provide private-line services from Chicago to St. Louis. That started it. It was the first entry in a major way of another company, into what was then, a monopolistic telephone industry. Thirty years later, we still have an intensely-regulated telephone industry at the local level, and still have considerable regulation of long-distance at the federal level. It has been a long and torturous period. It started in 1968, then it accelerated with the filing of antitrust suits in the middle 70's by MCI and the federal government. In that case, the federal government's case was settled in 1981, and that is the settlement that set the mold for restructuring the telecommunications industry. It separated long-distance from local, forced AT&T to spin-out the operating companies, and it created this very artificial notion that there is something different about local telephone service than there is about long-distance service. There was a deal struck with the government, a deal struck in a conference room, with no customers around, and customers to this day do not understand.

{14} Indeed, when you look at what is going on in the industry today, you see a fairly rapid reintegration of the industry, which again, is only natural in a free market as that is what customers want. So, from 1984 on, when you broke up the Bell System, there has been a gradual and increasing deregulation of the industry. More movement at the federal level, less at the state level, but yet, the constant effort to try to rationalize where this industry was going over the next decade. This ultimately resulted in the Telecommunications Act of 1996.

{15} Now, there is a lot of debate in the press. We all read it every day about whether the Telecommunications Act of 1996 is working. It was touted as the deregulation statute of the decade. It would at last set the rules, reset the registers, deregulate the industry, and people expected things to happen quickly, but they have not. Laws have been put on the books now for a year and a half, and not that much has really happened. Now, let us examine, "why not?" Well, the first thing about which we read is the problem that there is no competition at the local level in telecommunications. The answer to that is that the complaint simply wrong. At the business level, there is intense competition at the local level. There has been competition for decades, and it is more intense now, than it ever was. Nynex, the company where I worked for much of my career, lost ninety-percent of its private-line market in New York City over the course of three years in the early 90's. Ninety-percent of the private-line market went to competitors.

{16} Now, Nynex is back to better service and innovative pricing, and, in fact, they were (when I left the business) at about a thirty-percent share of the market, but that is real competition. There is lots of competition, and there has been for a long time, from very well-known companies you and I read about everyday. The Teleports of the world now, WorldCom, Teleport, and now AT&T, experience intense competition. What gets all the press is that there is not so much competition for you and me, as residential subscribers, sitting in our homes and apartments.

{17} And, is that really true? Well, it is partially true. There are a lot of players out there today that were not out there two years ago. They are called CLEC's, "competitive local exchange companies," and there are hundreds of them today. Indeed, they are the darling of Wall Street today, as many of them go public, they raise funds, and there are already enough of them out there. So, you have got venture capital companies taking platform companies and doing roll-ups, and taking small, emerging, competitive companies and roll-ups of these companies merging into the entities of larger competitors.

{18} You also have some pretty big money coming into the arena. Any of you who follow the telecommunications industry, in particular, the wireless side, during the last several decades know the name Craig McCoff. Guess who is behind Nextel's very substantial competitor for Strange Company? It is Mr. McCoff. So, that is what is happening. It is not happening at a lightning pace, but it is clearly happening.

{19} Now, what the problem here is, is that there is no technology drive at the moment at the local level, the way it was previously at the long-distance level. This is because it is very expensive to build facilities to head to your house and mine, and it takes a lot of marketing power and marketing money. So, it is a matter of time, not a matter of whether or not local markets are truly open.

{20} The other problem we have with the telecommunications industry is that there is no further competition for long distance, than there was two years ago. That was supposed to change too. They were supposed to have large players coming into the market to compete for long-distance. The thought was that we have the "Baby Bells" competing for long-distance, and then, none of that has happened. The reason that has not happened is because we have got a huge set of compromises in the Telecommunications Act of 1996. Everybody has a hand in the process. The state can rule on whether or not you pass the fourteen-point checklist. The FCC can rule on that as well.

{21} Justice has prevailed as a general rule, and what has happened is that the existing long-distance carriers have used that quagmire of overlapping approvals to keep the "Baby Bells" out of the long-distance market, claiming the local markets are not sufficiently open to meet the tests of this fourteen-point checklist. That kind of overlapping complexity with the states, the Department of Justice, and the FCC - all with independent views, and inconsistent views - is exactly the kind of frustrating and rapid de-structuring that has been occurring within the industry. That is the kind of backdrop for the industry that I bring to the electric deregulation process committee. It is not a perfect solution or response to the problems at hand, but my advice is to leave it to the states, where we are closer to the markets, closer to the customers, and let these markets restructure one at a time, at a pace that makes sense with the local jurisdiction, and at a pace which the customers in that area desire. With that, I will quit.

Bill Robinson

{22} The next speaker is Mark Darrell. Mark comes to us as General Counsel of Columbia Gas of Virginia. Prior to that time, he was with the New Jersey Resources Corporation, where he represented it and its natural gas subsidiary in a number of transactions and regulatory matters.

III. Mark Darrell

General Counsel, Columbia Gas of Virginia, Inc.

{23} Thank you very much, and also thank you to the Conference for inviting me to speak. I am supposed to address federal legislation and electricity. Of course, I do not know much about electric deregulation, but I have been through, of course, natural gas restructuring, and hopefully, I can give the electric industry some pointers.

{24} Before I get launched into my discussion, I wanted to just make people familiar with the basic traditional structure of the natural gas business. It is probably not familiar to most people that, with production, gathering, transmission, and distribution, you also have the adjunct to gathering - the storage function. The pipeline company was the conspicuous part of the industry in those days, as they purchased gas from producers, and resold it to distribution companies, who then sold it to the ultimate consumer.

{25} Deregulation in the business is basically taking place in all segments, but most of it is taking place in the production and transmission segments. I want to focus on producer pricing, especially to review the major events that involve regulation, and the deregulation to produce the prices. First, is the Phillips Petroleum decision, which took place in 1954, in which the Supreme Court held that, at a minimum, the natural gas of interstate commerce was subject to the Federal Power Commission's jurisdiction. Then, in the United States, during 1954-1978, there was pervasive regulation on producing prices by the Federal Power Commission, and later, the Federal Regulatory Commission, which ultimately resulted in curtailments and basic shortages in the international markets, particularly the Middle East around 1970. Two major events involving deregulation in reducing prices were the American Gas Policy Act in 1978, which involved partial deregulation of prices, and the Key Control Act of 1989, which incidentally, controlled all user prices.

{26} So, the Commodity Market became involved during the regulatory events. This involvement began in 1979, which is really when the NPA (National Power Act) was enacted. The first period we have is 1979-1982, which essentially comprised the rule of the seller's market for natural gas. With the rising prices, you had increased payoff provisions by the pipelines, and you had pipelines signing up for long-term contracts.

Then, you have the period of 1982-1985, which we describe as the gas bubble period. That was a period when supply essentially outstripped the demand, and you had industrials beginning to look for alternatives, such as buying pipeline gas, and you had the stock and natural gas markets. It also marked the beginnings of take-or-pay policy provisions, as current supply outstripped demand. The period from 1985-1992 was dominated by take-or-pay transactions, and pipelines in current take-or-pay situations, handle costs, settling and recovering those costs through take-or-pay recovery mechanisms. It increased spot market purchases, buying overseas, and declining purchases by interstate companies.

{27} The market today, I guess, is competitive. Since it was totally deregulated, at least on the commodity side with respect to production, you have greater market efficiency because of the numerous sellers and marketers of natural gas. You have the extended use of natural derivative instruments to make possible managing the price policy that has occurred in the market, and you also have a contract that includes a great deal of pricing flexibility.

{28} Let me now move to transmission unbundling. Before 1983, the traditional role of interstate pipelines, as I mentioned before, was the merchant role, which involved the activity of buying and selling natural gas. There was very little stand-alone transportation, with the exception of Texas. And, you had a series of FERC actions which began the process of unbundling. We will not go into this in any detail, except to say, that between 1983 and 1992, when these orders were issued, and the process began where the companies began to assume the ability to purchase their own supplies - pipeline supplies.

{29} At the same time, you have the Department of Industry pipeline supplies, and you have Order 636 of FERC emerging, which involved partial unbundling. Order 636 involved the complete unbundling of pipeline services. In order 636, essentially the pipelines were required to separate the sale from the transportation functions. They were required to exit the sales-release sale business. They could have sales contracts, but were required to convert those contracts to transportation capacity. This brief experimental rate design became the great design for most interstate pipelines, which allowed the recovery of one-hundred percent of fixed costs. Those companies on the secondary capacity market also experienced a change in their ability to bring in business. The pipeline system, which enhanced their ability to make off-system sales and release capacity into the secondary market. Finally, you had pipeline recovery of l00% of prudently incurred transition costs. There was distribution of unbundling. There was a move to unbundle services with large interruptible customers in the 1980s. Essentially not a whole lot happened until the 1990s, when transportation for the commercial, and ultimately residential, markets began. The pilot programs across the country began to happen, including here in Virginia.

{30} One of the lessons learned from the short term trip through history of natural gas deregulation, is that in the area of production, the laws of supply and demand have actually worked. If you compare the way the market worked in the early days through a period when there was transition until today, most people agree that deregulation of producer prices has been very successful. It has been essentially the balance of supply and demand since 1992. There has been an increasing sophistication in the way in which gas was purchased and sold, including the use of financial delivery tools in order to manage price risk. The second lesson is that the secondary capacity market has flourished since Order 636. Pipelines continue to play the role of the primary player in the market by building and selling pipeline capacity. However, holders of firm capacity on interstate pipelines have the ability to resell those capacity rights of the capacity release and the bulk of system sales. As the market has evolved, the capacity market has become "commoditized". Essentially, financial houses are beginning to develop tools that will enable people to trade capacity and make profits.

{31} The third point is that deregulation of interstate pipelines allowed companies to tailor their gas purchasing strategies to suit their own needs. In the past, these companies were required to purchase gas from pipelines at essentially the pipelines' average system cost. This created distortions in the market where the purchases occurred at higher load factors and system costs, fought the companies which purchased at lower than average system costs at FERC and other places on issues of cost allocation. A lot of those issues have now dissipated because companies now have the ability to structure purchases that suit their own load factors. This is presently occurring in commodity markets; it has not occurred as much in the pipeline transportation capacity market since they have not had the opportunity to structure their transportation capacity contracts with interstate pipelines.

{32} Gas purchasing risk has now moved down to the local level. The question for today is, as far as distribution is concerned, should the consumer assume some of this risk. I would submit that they do so in other areas. If consumers do not have gas or electricity, they essentially heat their homes with heating oil or propane. Clearly they have to make these choices every day and there is no reason why that cannot be done in the natural gas business.

{33} Another lesson is that deregulation has increased the number of sellers in the market. When local distribution companies (LDCs)purchased gas years ago, they bought from one to three interstate pipelines in their long term contracts. Now it is very typical for LDCs to purchase gas from twenty or more suppliers under shorter term contracts. The flexibility that now exists in the market allows LDCs to purchase gas using substantially more diverse sources than they did in the past. This allows them to price their product at market prices.

{34} Deregulation challenged the basic regulatory compact at the federal level. Section 7 of the Natural Gas Act is essentially the equivalent of the LDC's obligation to serve customers. FERC has essentially revolutionized Section 7 by making it less reliable for LDCs to rely on pipeline long term contracts. That simply means that market forces, rather FERC's certificate authority, will govern the future allocation of pipeline capacity.

{35} The next lesson learned is really a question, whether the pipeline segment will survive or thrive with the natural gas deregulation. In the past, pipelines relied on long term commitments in order to construct pipeline capacity. However, as mentioned before, in the secondary market there has been a "commoditization" of pipeline capacity. The belief is that "commoditization" will transfer over to the primary capacity markets so that pipelines will not have the long term purchase, supply, or delivery commitments to LDCs as they did in the past. Will pipelines prosper on short-term commitments? I would submit that it depends on their ability to withstand the risks. It may very well be, or should be, that deregulation of transmission capacity gives customers the option to purchase either from the pipeline or somebody else, under the assumption that there are many sellers of transmission capacity. This may be true whether it is the pipeline itself or whether it is someone's old, long term or firm pipeline capacity.

{36} The other significant question is whether investment banks should finance future pipeline products on short term commitments? The answer here is unclear. The ultimate lesson is that in the areas where there is workable competition, the laws of supply and demand do work, and should govern when possible. What are the characteristics of workable competition? It is the presence of numerous sellers and buyers in the market, and also the absence of market power in one player or small group of players.

{37} The next topic is unbundling, which is essentially about breaking down the benefits of the competitive market to residential customers. As mentioned before, those customers who are using heating oil or propane already have the ability to choose from different suppliers. Those options should be made available to customers of natural gas as well. Some of the options that are available include fixed prices and index prices, and frequent-flier-type programs. These programs include weather-proof bills where customers can decide up front how much they are going to pay for gas in a particular winter and consume whatever they wish.

{38} I am supposed to talk about federal legislation so let me just briefly cover it. In general, my view is Congress should allow the states to pursue unbundling at their own speeds. However, I do believe that if unbundling does not occur in an expedient manner, Congress will probably step in. Richard alluded to the fact that there might be some major federal action at some level, and maybe that should be the case, in order to create a seamless energy marketplace within the fifty states. I will just point out that, in terms of what happened in the natural gas business, Congress only acted in the production area and most of the deregulation that has taken place has done so at the FERC and at local LDC levels.

{39} Finally, up to this point, I have been pretty much presenting my own views. Let me give you a company view. That view relates to the repeal of the Public Utility Holding Company Act (PUHCA). Columbia Gas is one of three registered public utility holding companies that are gas companies. PUHCA is essentially an antiquated act that really needs to be repealed. There is simply no reason why a company like Columbia should not be able to compete with a company like Aniline, which is frankly a lot larger and probably has substantial assets at its disposal. That concludes my remarks and I would be happy to take any questions.

Bill Robinson

{40} Thank you Mark. Our third and final speaker is Henry Brown. Henry has had an excellent opportunity to observe Congress for a number of years. He is presently the Vice President of Governmental Affairs of Entergy Corporation, and prior to that time had similar responsibilities with Carolina Light and Power. Welcome Henry.

IV. S.M. Henry Brown, Jr.
Vice President- Governmental Affairs, Entergy Corporation

{41} Thank you, Bill, that was a better introduction than I got last time. I was introduced as being invited because they wanted the latest dope from Washington.

{42} As I looked over the attendance list, I must say I was somewhat intimidated. I can recall the story, which I am sure many of you have heard, about the fellow who died and went to heaven. One of his first demands of St. Peter was that he get everybody in heaven together because he wanted to talk about the great Johnstown flood and how terrible it was. St Peter reluctantly said, "Well I will get everybody together, but I want you to remember that Noah is going to be in the audience."

{43} Thank you very much for inviting me to share my views and those of Entergy on the electric utility restructuring. I am going to be a little bit more specific than the first two speakers. My domicile is in Washington, inside the Beltway, so I am going to have an inside-the-Beltway mentality about all of this. You will have to kind of clear through that as I talk. What I am going to do is talk a little bit about the legislative proposals that are currently pending, what Congress may do this year, and what we feel they may ultimately do. As most of you are aware, Entergy is a multi-state electric utility holding company, with operations in Louisiana, Mississippi, Arkansas and Texas. Most recently they acquired the Electric Distribution Company in Melbourne, Australia, and London, England. Like our fellow member, Columbia Gas, we are a registered holding company under the Public Utility Holding Company Act of 1935. We are one of twelve electric utility holding companies in the electric business. The other three make gas. Entergy was one of the first utilities to file an open assets transmission during the early 90's. We were strong supporters of the Energy Policy Act in 1992. Entergy, along with Duke Energy, is a charter member of Alliance for Competitive Electricity, known as ACE, one of the first organizations that came together to support the transition to retail competition.

{44} Numerous restructuring bills are currently pending in Congress that would place some type of federal footprint on retail competition. It is clear as one reviews the various proposals that there is no consensus on what the federal role should be. Some legislators argue that federal legislation should address only those things that the federal government can handle, while others argue that comprehensive federal legislation is needed to avoid a hodge-podge of conflicting state retail competition rules and regulations.

{45} The Bumpers-Gorton Bill in the Senate proposes a January 2002 date certain for retail access, full stranded cost recovery, and a non-by-passable charge for universal service programs. It grants FERC authority to create transmission regions and designate an independent system operator to manage each system. It removes the TVA (Tennessee Valley Authority) fence as well as TVA's monopoly within its service area. It adopts required annual renewable percentages of up to 12% in 2013 from 5% in 2003, and includes hydroelectric power. It repeals PUHCA and Section 210 of PURPA (Public Utility Regulatory Policies Act).

{46} In the House, Representative Shapersville also adopts a date for certain retail access, requiring states to establish retail choice by December 2000, or be preempted by FERC. States are required to consider a stranded cost recovery charge, but are not required to actually do so. Shapersville proposes a renewables program, but does not favor hydro-facilities such as the Bumpers-Gorton Bill. PUHCA and Section 210 of PURPA are repealed, relating to retail access.

{47} Two draft bills in the House have recently been circulating and have gained favorable attention. One proposal by Representative Cliff Sterns of Florida repeals PUHCA and PURPA. It encourages states to adopt retail competition, but does not mandate such. A reciprocity provision forbids utilities from competing for business in other states unless their own state is open for competition. Another proposal by Representative Largent calls for a January 2001 date for certain retail access, but grandfathers all existing state retail programs. It also expands FERC authority over public power groups, liability standards, and ISO (independent system operators).

{48} In the Senate, Senator Nichols recently floated his proposal, in an indirect attempt to encourage retail competition, that eliminates the state's historic power to regulate retail sales under Section 201 of the Federal Power Act. Nichols expects that once state monopoly franchises are open to challenge, courts will strike them down as a violation of the dormant Commerce Clause's prohibition on state interference with interstate commerce. The proposal also eliminates the state-action defense in antitrust suits challenging state monopoly franchises.

{49} Two other pending bills of note are Senator Thomas' bill that grants the states the authority and responsibility for deciding whether or not to adopt retail access, and Senator Bingham's bill giving FERC expanded jurisdiction over retail transmission reliability and ISO formation. Bingham's bill does not include a mandate for retail competition.

{50} In late March, the Clinton Administration weighed down on its own restructuring plan. Generally that plan provides for full retail access by January 2003, but it defers to lower cost states, and allows any state to opt out if it believes its consumers would be better off under the status quo system or its own unique restructuring proposal. Environmental changes are prominent in the plan, as you might imagine, which requires 5 1/2% of each utility's power sales to come from renewable energy resources, excluding hydro, by 2010. An annual $3 billion public benefit fund would provide matching federal dollars for low income energy assistance, energy efficiency programs, consumer education, and the development of emerging technology. The program would be funded through an interconnection fee which proposes caps of 1 million per kilowatt hour.

{51} The plan clarifies EPA's authority to require a cost effective interstate NOx (nitrogen oxide) emissions trading system, but does not adopt a plan for Carbon emissions or Ozone transport. The Administration plan also gives FERC more authority to oversee transmission systems and to ensure reliability, such as authority to require that transmission facilities be placed under the control of an ISO. The plan encourages the formation of a regional transmission planning agency to develop siting rules for new generation transmission and distribution facilities. The FERC would also be granted additional authority to remedy market power concentration in the wholesale market, and to provide backup market power remedies when the state has insufficient authority to remedy market power itself.

{52} Consumer protections are also included in the Administration's plan. The Secretary of Energy is authorized to establish nationally uniform labels for electricity pricing, terms, conditions, generation source, and generation emissions characteristics.

{53} What does all this mean for 1998? In a word - nothing. That is at least as far as this year is concerned. Representative Schaefer's Energy and Power Subcommittee has had so many false starts that if this were a track meet, they would have been disqualified a long time ago. The latest word is that a bill will be marked up this month. I doubt it. There is absolutely no consensus on just about any issue. A date for certainty, stranded cost, public power, environmental provisions, you name it, it is a point of contention. With less than forty legislative days left this year, and with the tobacco settlement issue and nuclear waste legislation to name a couple of items, I can't see any movement in the House on restructuring legislation. In the Senate, Energy and Natural Resources Chairman Frank Murkowski is not inclined to move anyway. His committee primarily consists of members from predominantly low cost, states-rights oriented, western, rural states that appear to have no real appetite for such a controversial bill in an election year. The Administration is known to be developing legislative language to supplement the release of their concept document. However, the resignation of Secretary Peña and the process of identifying, nominating and confirming his replacement, coupled with the continuing controversy plaguing the Administration over air quality issues, further complicates the possibility of it exerting any real influence on the issue this year.

{54} Now what should Congress do? In our opinion, Congress should repeal the Public Utility Holding Company Act this year. As you may know, a majority passed a bill to this effect it in the Senate Committee and it is ready for floor action in the Senate. No bill has, however, been introduced in the House. PUHCA is already impeding registered holding companies' ability to respond to competitive pressures. It is impeding our ability to position ourselves to mitigate our competitive exposure by denying our ability to diversify in other utilities. It is also a barrier to entry by other potential energy suppliers. PUHCA repeal should not be held hostage by passage of a full comprehensive bill. Its effective repeal should not be contingent on all states in a holding company's service area having full retail competition as the legislation I just mentioned entails. While recognizing the rights of the states to manage electric utility restructuring, Entergy, as a multi-state company, finds itself facing a somewhat unique dilemma along with other energy holding companies. We envision the possibility of each of our states coming to differing and conflicting conclusions, particularly in the area of stranded cost recovery. In such circumstances, we feel there may be a possibility of major differences. That's the $64 question. The current pace of state activity and the lack of any consensus at this time at the federal level suggests to me that federal legislation will ultimately be enabling legislation. That is, federal legislation will address only those issues the states themselves cannot resolve: PUHCA and PURPA repeal transmission issues, possibly reciprocity issues, and nuclear fission. Thank you.

[**] **NOTE:** All endnote citations in this article follow the conventions appropriate to the edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION that was in effect at the time of publication. When citing to this article, please use the format required by the Seventeenth Edition of THE BLUEBOOK, provided below for your convenience.

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