

7  
3  
100

# **Alliance to Protect Electricity Consumers**

## **Statement of Principles** *regarding* **Electric Industry Deregulation**

February 12, 1998

## **Alliance to Protect Electricity Consumers**

The Alliance to Protect Electricity Consumers (APEC) is a coalition of highly diverse organizations formed to ensure the positive resolution of consumer issues related to electric industry deregulation. Our common concerns are the potential effects of deregulation on consumers, communities, the environment and the workplace.

### **Statement of Principles Regarding Electric Industry Restructuring**

**This** Statement of Principles is the consensus view of APEC members regarding the specific topics listed below. It is a presentation of facts and issues which we recommend to policy makers and the general public for careful consideration.

#### **Contents**

APEC Organizations & Contacts ....	3
Cost to Consumers .....	4
Environment .....	6
Mergers and Market Dominance .....	7
Reliability .....	9
Safety .....	10
Societal Impacts .....	11
Stranded Costs .....	12
Stranded Workers .....	13
Tax Revenues .....	14
Universal Service .....	15

## Organizations and Contacts

**A. Philip** Randolph Institute  
    **Norman Hill** 202-289-2774  
American Federation of Labor and Congress of Industrial Organizations  
    Bill Cunningham 202-637-5 169  
American Federation of State, County and Municipal Employees  
    Ed **Jayne** 202-429-1 188 [jae@afscme.org](mailto:jae@afscme.org)  
American Public Power Association  
    **Madalyn Cafruny** 202-467-2952  
**Building** and Construction Trades Department, AFL-CIO  
    **Dick Seelmeyer** 202-347-1461  
Consumer Federation of America  
    Mary **Rouleau** 202-387-6121  
Electric Consumers **Alliance**  
    Bob **Brandon** 202-331-1550  
Friends of the Earth  
    John **McCormick** 202-783-7400  
Industrial Union Department, AFL-CIO  
    Peter **diCicco** 202-842-78 17  
International Association of Machinists  
    Mike Flynn 301-967-4704  
International Brotherhood of Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers and Helpers  
    Bridget **Powell Martin** 703-560-1493  
International Brotherhood of Electrical Workers  
    **Mike** Emig 202-728-6060  
International Federation of Professional and Technical Engineers  
    **Candace M Rhett** 301-565-9016  
Maritime Trades Department  
    Daniel Duncan 301-899-0675  
National Association of Community Action Agencies  
    Christine Alden 202-265-7546  
National Consumer Law Center  
    Kay **Guinane** 202-986-6060  
National Consumers League  
    Linda **Golodner** 202-835-3323  
National Council of Senior Citizens  
    Daniel Schulder 301-578-8839  
National Farmers Union  
    **Lynn** McBride 202-554-1600  
National Rural Community Assistance Program  
    Kathleen Stanley 703-771-8636  
National Rural Electric Cooperative Association  
    Bob **Kabat** 703-907-564 1  
Oil, Chemical and Atomic Workers International Union  
    Paula **Littles** 703-876-9300  
Public Citizen  
    **Wenonah** Hauter 202-546-4996  
Service Employees International Union  
    Robert Masciola 202-898-3346  
United Mineworkers of America  
    **Kristin Leary** 202-842-7294  
United Steelworkers of **America**  
    Steve Francisco 202-778-4384  
**Utility** Workers Union of America  
    Sam Weinstein 202-347-8105



**The Alliance to Protect Electricity Consumers**  
**Statement of Principles**  
February 12, 1998

## **Cost to Consumers**

Electric rates could increase for residential customers and small business due to profiteering, temporary shortages, and the shifting of costs from large industrial users to small commercial and residential customers. Any legislative and regulatory actions leading to deregulation or restructuring of the electric utility industry should not proceed if lower rates for residential consumers and small businesses cannot be **guaranteed** for both the short and long term.

Where deregulation is adopted, residential and small business consumers could face several possible scenarios:

Deregulation will actually increase rates for consumers in states with low-cost electricity, if utilities export the cheap electricity and sell it elsewhere to the highest bidder.

Predicted price decreases may not materialize if there is not adequate generation supply and vigorous competition in generation markets. Dominant firms will be able to charge higher prices if there are too few competing sellers. Residential consumers will not have the same buying power as large industrial customers, who will have the bargaining leverage to buy up all the low-cost power, leaving only high-cost power for residential consumers.

Consumers will have to sift through confusing, possibly misleading, offers of electricity prices, savings, service options, and payment plans. They may have to **pay** transaction fees to power marketers, brokers, and other middlemen, and the related increased marketing and advertising costs.

Whether caused by accidental outages or insufficient generating reserves, any shortage of electricity **will** drive up the market price of available electricity.

Depending on how stranded costs are divided between utilities and classes of consumers, any possible price reductions due to deregulation could be substantially delayed or nullified altogether. Residential consumers of a high-cost utility may end up paying a disproportionate share of its stranded costs if the utility's large customers no longer buy electricity from it.

Given these possibilities, deregulation might not provide lower prices to residential and small business consumers.

Consumers in certain markets are aggregating their electricity purchases to protect themselves from higher rates. Deregulation, however, should not require consumers to aggregate to avoid higher costs or reduced services.

continued.. .

Cost to **Consumers**, *continued*

**Any deregulation plan must include, at a minimum, the following consumer protections:**

- **Lower Rates. Deregulation** should not proceed if lower rates for residential and small business consumers cannot be guaranteed for both the short and long term.
- **Competitive Safeguards.** If policymakers choose to deregulate, state and federal regulators must ensure that truly competitive generation markets have been created before deregulation is adopted, and maintained afterward. To prevent the creation of unregulated monopolies, specific definitions of what constitutes effective competition must be in place before deregulation takes place. In addition, state and federal agencies must update and **strictly** enforce antitrust and other statutes protecting consumers.
- **Protection from Price Cross-Subsidization.** To increase profits to their stockholders, for-profit corporations with both competitive and regulated subsidiaries may attempt to subsidize their competitive subsidiaries by charging higher prices to captive customers of their regulated subsidiaries. State and federal regulators must prevent this **type of cross-subsidization.**
- **Access to Information.** Consumers must be able to easily determine and compare the prices for transmission, distribution, and retail energy services and have access to information about the generation sources of the electricity they purchase.
- **Aggregation Protection.** **The ability** of consumers to aggregate their electricity purchases must be protected.
- **Consumer Protections.** Federal and state agencies must update and strictly enforce **consumer** protection laws to ensure fair marketing, sales and service practices. All sellers of electricity should, at a minimum, be licensed and be subject to penalty for license violations.

Regulators must address the following issues raised in an environment with multiple electric power suppliers: privacy protection; "**slamming**" (unauthorized switching of providers); pre-selling (securing customers before a supplier has the technical ability or legal authorization to provide service); fair and understandable billing; clearly written terms and conditions of service; **nondiscrimination**; adequate customer service offices.

• \*\*

**The Alliance to Protect Electricity Consumers**  
**Statement of Principles**  
February 12, 1998

## **Environment**

Environmental and conservation programs implemented by electric power companies could be dropped and/or would not be expanded. Deregulation could adversely affect the environment. Funding for commercialization of renewable resources could be jeopardized.

Current attempts to deregulate the electric power industry make the already difficult **environmental** issues even more complex. Increasing competition is already leading to cuts in funding for energy efficiency, renewable energy, and other utility programs that protect the environment. Deregulation could lead to the shutdown of the most inefficient and expensive power plants, but it could also result in marketing and advertising that encourages greater consumption and increased emissions.

**Any plan to deregulate the electric power industry must include the following measures:**

- Spending on programs to conserve energy and increase the reliance on cleaner electric power sources, which is already inadequate, must not be reduced. Spending should be increased for energy efficiency and clean energy technologies such as wind, solar, biomass, geothermal, ethanol, small hydro power and advanced fossil energy technologies.
- No existing generating unit should be allowed to operate in violation of any existing or future Clean Air Act provision or regulation.
- States and the federal government should **improve** the energy efficiency of buildings and equipment by making appropriate changes to building codes and efficiency standards. The federal government should apply and meet the same standards for buildings and efficiency that are required of non-federal sectors of the economy.
- Recipients of low-income energy assistance should not be prevented from purchasing power from **environmentally-efficient** generation sources.

• \*\*

**The Alliance to Protect Electricity Consumers**  
**Statement of Principles**  
**February 12, 1998**

## **Mergers and Market Dominance**

**Ongoing consolidation of existing electric utilities and other energy industry companies is likely to lead to abuse of economic power and manipulation of energy markets to maximize profits at the expense of consumers.**

Electric utility deregulation and competition are being presented as customer choice. Some deregulation proponents, however, want to dominate the market and its consumers, and to prevent competition. Giant utility holding companies, their affiliates, and global energy companies want to dismantle **current** laws that attempt to suppress anti-competitive forces and protect consumers from monopolies abuses.

In the late 1920s, 16 corporations controlled 85 percent of the nation's power supply. Congress enacted the Public Utility Holding Company Act (PUHCA) to simplify the web of corporate relationships and establish minimum consumer protections. Today, while some investor-owned utilities are publicly endorsing competition, a growing wave of **investor-**owned utility mergers and acquisitions threatens to kill any chance of competition actually developing.

If the market protections provided by the PUHCA are repealed and not replaced with more effective statutory provisions, and if the number of competitors is reduced to a handful through mergers and acquisitions, there will be no real hope of bringing competitive choices to consumers. A few generation sellers will have substantial market power and the ability, through that market dominance, to erect high barriers to the entry of other competitors.

*continued.. .*

## Mergers and Market Dominance, continued

**To sustain a healthy competitive electricity market for consumers, certain changes are needed and specific safeguards must be in place:**

- The federal enforcement agency should change. The Securities and Exchange Commission appears to have little interest in enforcing PUHCA's consumer protections against market power abuses. The Federal Energy Regulatory Commission is the appropriate federal agency to aggressively enforce PUHCA or a **modernized** successor statute.
- Market power must be restrained. A fair, efficient competitive electric **industry will** not develop if the market consolidates to a handful of giant companies or if some companies are allowed to engage in predatory pricing or discriminatory actions.
- The Department of Justice, the Federal Trade Commission, and the Federal Energy Regulatory Commission must be given the resources and statutory authorities necessary to effectively police electric markets. These statutory authorities should include:
  - The **authority** to order divestiture of generation facilities if necessary to address effectively the abuse of existing market power.
  - The authority to prevent preferential transactions between corporate affiliates, including discriminatory access to essential **information**, below-cost transfer pricing, or other anti-competitive arrangements; and **in** the event of repeal or reform of the PUHCA, the transfer to FERC of provisions under that Act necessary to prevent preferential or anti-competitive activities among and between corporate affiliates of for-profit utilities.
  - The authority to ensure that reliability standards and requirements are adopted and enforced in a nondiscriminatory and competitively neutral basis.

• \*\*

**The Alliance to Protect Electricity Consumers**  
**Statement of Principles**  
**February 12, 1998**

## **Reliability**

Many electric power companies, preparing for competitive challenges, are cutting costs and deferring maintenance. Such cost-cutting could result in systems so overstretched they may not be able to operate efficiently in times of peak demand or during storms.

Industry restructuring must ensure an adequate generation supply and reliable transmission service. Our electricity systems are highly interdependent and complex operations. Reliability depends on the cooperation of **all** entities using the systems and a well-trained workforce.

Electrical industry groups **now** maintain interstate reliability through voluntary adherence to agreed upon guidelines. Early indications show that competition among utilities is already overshadowing the prior tradition of cooperation, and some utilities have cut their maintenance staffs and schedules to cut costs.

### **To protect consumers from unreliable service:**

- **The** roles of state, regional, and federal regulatory authorities must be clearly defined. Primary oversight and enforcement for interstate reliability must be established at the regional or federal level.
- Mandatory national and regional reliability rules and standards should be developed in collaboration with transmission providers, transmission users, consumers and other interested parties.
- An industry-wide umbrella group, such as the North American Electric **Reliability** Council (or some successor group) should implement such national standards, but any such group should be subject to the oversight, approval and dispute resolution powers of the Federal Energy Regulatory Commission.
- All retail power supply providers in a restructured industry **must** comply with reliability and minimum quality of service standards.
- Measures must be taken to assure adequate generation reserves.

• \*\*

**The Alliance to Protect Electricity Consumers**  
**Statement of Principles**  
February 12, 1998

## **Safety**

**Worker safety and public safety could be threatened by continued cost cutting.**

**One likely outcome** of electric industry deregulation will be a de-emphasis of public and worker safety as the emphasis shifts to maintaining and increasing profits. Staffing levels and training programs have been the first areas cut when deregulation has occurred in other industries. Work force reductions and scaling back of training programs are already occurring as companies jockey for competitive position.

Electricity service is provided in close proximity to people. It can be extremely dangerous unless conducted properly. In general, industry workers, management and regulators have achieved an exemplary safety record. A long history of proper training and appropriate investments in public safety and worker safety is responsible for that record.

The foundation for the industry-wide safety record is a system of voluntary consensus standards developed through the joint efforts of all segments of the electric utility industry. Some of these consensus standards, such as the National Electrical Safety Code and the National Electrical Code, have become mandatory through enactment by state legislatures. Others form the foundation for the setting of mandatory standards by federal regulatory agencies.

Under the present regulatory framework, funding for this safety culture is borne by electric utility companies, which pass on much of the cost through the rate structure to the consumer. With industry deregulation, funding for public and worker safety programs could be cut substantially.

### **To assure continued public and worker safety:**

- All aspects of the continued development of safety codes and standards must continue to be fully funded by all sectors of the electricity industry.
- Consensus on safety codes and standards must be continually developed by qualified, experienced industry and labor representatives.
- Unregulated generating plants must be subject to state and federal general industry OSHA requirements and must undergo periodic government inspection.

◆◆◆

**The Alliance to Protect Electricity Consumers**  
**Statement of Principles**  
**February 12, 1998**

## **Societal Impacts**

Valuable community-based programs funded by local power companies are being placed at risk. They include lifeline rates, low income assistance, wildlife preservation, service cut off protections, and **community** services such as lighting for playgrounds, athletic fields, and holiday lighting.

Under the traditional regulatory structure, power companies have provided programs such as community lighting and wildlife preservation. Even under the current regulatory structure, however, government and utility-sponsored programs designed to keep the lights on for people with low incomes have been inadequate. For deregulation to benefit residential customers, a comprehensive program, like that existing in the telecommunications industry, must be implemented.

Similarly, while most existing power companies have service cut-off protection programs, the adequacy of such programs should be ensured. Such programs must be applicable to all retail suppliers.

### **Deregulation should enhance and protect public benefit programs by:**

- Providing reasonable incentives to power companies, existing and new, to provide community lighting services for playgrounds, athletic fields and other similar public service programs.
- Including a comprehensive program of low income assistance, including lifeline rates, subsidies and assistance with hook-ups.
- Requiring all retail suppliers to have an adequate program ensuring that service will not be terminated unfairly or during extreme weather.

• ♦♦

**The Alliance to Protect Electricity Consumers**  
**Statement of Principles**  
February 12, 1998

## **Stranded Costs**

Under rapid, radical deregulation, some electric power companies may not be able to recover the costs they incurred to provide electric service. The signers of this document differ in their views as to whether stranded cost recovery is necessary or appropriate. All agree, however, that restructuring should not proceed unless all customer classes benefit.

If deregulation is adopted, utilities might not be able to recover the costs they have incurred to provide service, especially investments in generation facilities that produce electricity at prices now above the prevailing market price.

APEC members have widely varying views on whether utility recovery of these stranded costs is appropriate. Groups representing consumers believe utilities should absorb all or a substantial portion of these costs because the utilities chose to make the investments. Groups representing publicly- and consumer-owned utilities believe recovery of costs stranded as a result of deregulation is generally appropriate, because utilities were required to build facilities sufficient to serve all retail consumers in their service territories.

### **Despite these widely varying views, the members of APEC do agree on certain fundamental points:**

- Stranded cost amounts should be based on actual market prices over time, or the actual sales price buyers pay for stranded facilities when sold in arms-length transactions. Stranded cost recovery should not include phantom stranded costs that do not materialize.
- Stranded cost calculations should be carefully examined to make sure that utility costs are not recovered twice. For example, tax costs already collected through deferred tax mechanisms should not be collected again,
- Utilities should not earn a profit on stranded assets through stranded cost recovery.
- Stranded cost allowances should actually be used to address stranded cost issues and not for other purposes, such as overseas investments or purchase of competitors.
- Human stranded costs, i.e., the cost of worker assistance and retraining, should be considered a legitimate, recoverable stranded cost.
- Large industrial customers must pay their fair share of stranded costs.
- Stranded cost recovery should not subsidize future operating costs of stranded plants.

◆◆◆

**The Alliance to Protect Electricity Consumers**  
**Statement of Principles**  
February 12, 1998

## **Stranded Workers**

Workers who have devoted their careers to the industry and made a commitment to gaining skills and experience are already suffering great losses with deregulation. Qualified workers are losing their jobs and receiving little or nothing in the way of severance pay, retraining, or other job placement assistance. To assure continued system reliability and safety, every effort should be made to retain electric utility workers.

Utility companies buy equipment and train workers to be prepared to respond rapidly to outages and emergencies, and to perform regular and preventive maintenance. In response to emergencies or disasters, utilities also "loan" skilled employees to each other to restore electric service as rapidly as possible. This needful cooperation may diminish when affiliates of these utilities are competing for customers.

Anticipating the possibility of competition, investor-owned utilities have, since 1990, **cut the** number of electricity employees nationwide by twenty-five percent. These cuts have had devastating effects on the affected employees and their communities. Utility maintenance and emergency response time have been impaired.

Extended blackouts of large areas of the nation's power grid have been directly attributed to utility cost cutting and reductions in maintenance. Cutting of workforces and reductions in employee training are creating a shortage of the skilled workers necessary for power restoration in emergencies.

Work force layoffs have also affected workers in the power generation plants, as well as clerical and customer service workers. The increased workloads and responsibilities are being shifted to the remaining utility employees who now cover expanded daily work routines. The work load is compounded when the inevitable emergency situations arise and there are fewer people to deal with them.

### **Any electric utility industry restructuring should ensure that:**

- The critical necessity for trained and qualified personnel to operate all segments of the electric utility industry is met by implementing, as soon as possible, the provisions of the **1994 National Skills Standards Act** for all electric utility workers.
- State or federal electrical system reliability and maintenance standards require appropriate **staffing** levels of trained and qualified utility workers at all levels of the industry.
- Appropriate provision is made for severance or retirement options, job retraining, and outplacement assistance for affected utility employees.

• +\*

**The Alliance to Protect Electricity Consumers**  
**Statement of Principles**  
February 12, 1998

## **Tax Revenues**

Currently, electric power companies contribute significantly to the local tax base. In a deregulated industry, this tax revenue could dry up or drop considerably.

State and local taxes imposed on electric utilities may include gross receipts taxes, income taxes, franchise fees, and property taxes that may be applied differently than those imposed on other businesses. Taxes imposed on utility customers, but collected and remitted by the utility, include sales taxes, use taxes, and utility user taxes. In many states, the aggregate level of taxation on utilities is significantly greater than that imposed on other businesses.

Much of the existing tax regime for electric utilities could become obsolete under deregulation. Deregulation will present three basic tax issues for state and local governments:

1. Revenues could decline in many jurisdictions. This could result from lower electricity prices, a shift in market share from more to less heavily taxed service providers who may be located out of state, and from declining values of property owned by utilities.

2. If utilities continue to be taxed on different bases than other electricity providers, these tax variations will create a very different economic effect in a deregulated industry than under prior cost of service regulation. Taxes which utilities previously recovered as a matter of course under cost of service regulation may become unrecoverable, as consumers choose different electricity providers to avoid the payment of these taxes.

3. If existing tax laws are changed, local jurisdictions could lose control of the tax revenues.

### **To protect consumers:**

- **No** deregulation plan should increase the tax burden of residential and small business consumers or cause reductions in tax-supported services, such as police, fire, and schools.
- Governments considering deregulation must also consider what tax reforms are necessary to prevent the loss of local control or the increase of taxes on individual and small business consumers.

• \*\*

**The Alliance to Protect Electricity Consumers**  
**Statement of Principles**  
February 12, 1998

## **Universal Service**

**Deregulated electric power companies and new competitive power suppliers may not be obligated or motivated to serve low income customers or customers that need electricity in inner cities, rural areas, or regions suffering economic trouble. Service quality could deteriorate below acceptable standards.**

Not every electricity customer is equally profitable to serve. Not every area costs the same to serve. In a deregulated industry, electricity service sellers that operate solely on a for-profit basis may be allowed to choose freely whom they will serve and the rate they will charge each customer. If they do, they can be expected to segregate customers by geographic area, past credit records and income level, and to sell to the most attractive customers. If they do, what quality of service at what price can people in high-cost, difficult to serve, areas expect? How will people with lower incomes be assured they can afford electric service? Unless these questions are equitably resolved, deregulation **will** not benefit the whole nation.

**Before deregulation is adopted, there must be assurance that:**

- All consumers will have access to reliable, non-interruptible electric service at reasonable, affordable prices.
- Customers are not left without a power supplier and do not have to endure price-gouging simply because they have no other supplier.
- Low-income customers are not discriminated against or priced out of the market.

**To assure these outcomes, any deregulation plan should:**

- Require all providers of electric distribution service to offer to install facilities needed to connect all customers in their service territories.
- Require suppliers to offer service to all customers in a specified geographic area, or designate a "supplier of last resort" to provide service at a reasonable price to those consumers without a reasonable choice of suppliers.
- Prohibit "redlining" or other discrimination against low income consumers.
- Include a universal service fund to help defray the costs of serving lower income consumers and those consumers in rural or high cost areas.

• \*\*