Disconnected Policymakers

The halt of restructuring is not merely due to "bumps in the road" on the way to the idealized marketplace. A renewed commitment to universal service at reasonable rates is needed.

Gerald A. Norlander

I. The Vision

With the zeal of true believers, today's electric industry policymakers have sought to build on earth their ideal vision of a competitive regimen. In this economic nirvana, market forces trump longstanding laws and render traditional utility regulation unnecessary and obsolete. Market price signals, not energy planners, assure that supply always exceeds demand. Once divested from vertical monopolies, and in vigorous competition with one another, generating plants run with greater efficiency and reliability; the market works invisibly to shut down dirty and inefficient plants. New spot markets, devised by state and federal regulators weary of setting rates, harness the profit motive of energy sellers to drive bulk power prices down, eliminating the conscious setting of just and reasonable wholesale rates by fallible mortals. Even better, the new wholesale spot markets reliably determine retail energy rates, which are lower than could be achieved with cost-based regulation. Utilities give up their monopolies if strandable cost recovery is allowed, and if limits on holding companies are relaxed, thereby allowing deployment of capital (amassed by dint of their monopoly status) to far-flung purposes less boring than paying dividends to shareholders. Mergers bring economies of scale without market power. Market forces rout and eventually force bloated public power agencies run by city, state, and federal government bureaucracies to see the light and privatize. Transparent surcharges on

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rates for monopoly bottleneck services will fund expenditures for demand-side measures, but only temporarily, and at reduced levels, until markets fulfill that function, too.

Rules adopted in the bygone times of monopolies can be eliminated for new entrants, because choice of an alternative provider, not law, is the ultimate customer protection. Not to worry—the market will bring good customer practices, and weed out bad apples. Large and small consumers alike will see lower rates, more choices, improved services, all with no impact on reliability. The introduction of price volatility, by incorporating spot market prices into consumer retail rates, is no problem, for if customers prefer stable rates, the market will provide that, too.[1] Low-income customers will have lower rates under the new regimen, so maintaining the existing hodgepodge of utility programs for the poor will suffice until more marketlike solutions are devised.[2]

II. The Restructuring "Juggernaut"

In defining the vision of "competitive energy markets," the warnings of skeptics were brushed aside.[3] Indeed, a competition has emerged among state regulators to rank themselves highest in attaining the most pure characteristics of the new regimen.[4] Large industrial customers clamor for access to cheaper energy bought directly from the new gas-fired generators, perhaps to avoid the sunk or averaged costs of the utility system. Residential customers are enticed with promises of more choice, lower prices, more and better services. Leaders—even from states enjoying inexpensive electricity under the traditional system of regulation—have denounced the statutory "just and reasonable rate" regimen of the last century, and professed belief in the market regimen. Secret doubters likewise professed belief, and promised they would convert — but later, in a few years.[5]

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With regulators, legislators, and major elements of the electric industry aligned, and with high supplies, low load forecasts, and low natural gas prices in the mix, restructuring took on an appearance of inevitability, an overwhelming force that could not be resisted—a juggernaut.

The metaphor is apt. By legend, people were crushed under the wheels of the juggernaut.[6] Further study reveals that victims were not disbelievers trying to halt, destroy, or divert it. Rather, the juggernaut crushed the zealots themselves. Reminiscent of some utilities adopting the tenets of restructuring, they "cast themselves under the chariot, so that its wheels may go over them, saying that they desire to die for their god. And the car passes over them, and crushes them, and cuts them to sunder, and so they perish on the spot."[7] In addition to the most fervid believers, the juggernaut also took its toll of the weak, the sick, and other innocent victims in its path.

III. Reality Intrudes

The electric restructuring juggernaut has rolled on. But in the real world, circumstances do not fit the vision. We now have: California; Montana; Washington, Oregon, Arizona; New York City; Alberta; Iowa; Nevada. We have: double and triple digit rate increases,[8] supply deficiencies, unscheduled outages, rolling blackouts. We have: large industrial firms halting production, thousands of workers laid off, skepticism that the new spot markets will ever work as envisioned;[9] Economic vitality imperiled. Competitive providers now withdraw from the retail market. Huge capacity additions costing billions are built merely to tame the spot markets. States with timetables for restructuring postpone them, and the brakes are put on further divestiture, lest new owners run wild in federal territory. Obsolete plants and diesel generators are pressed into service despite pollution concerns.[10] Regulators acknowledge unchecked market power in the very markets they

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created to substitute for price regulation.[11] Businesses are recruited to relocate to jurisdictions with stable rates that did not restructure. Regulators promulgate elaborate volumes of unofficial "uniform business practices" instead of rules. Utility consumer service offices close. New bipartisan support for emergency relief measures are quickly cobbled together to ameliorate the plight of the poor, living on fixed incomes, who cannot cope with rapidly escalating bills for electricity.

At this writing, a billion dollars is evaporating in California each week, with no end in sight. Discussions about restructuring divide into two camps: Was this all a big mistake, or was it a bad idea? The "big mistake" theory is that restructuring was a "good idea," but implemented in a flawed manner harming consumers. In this camp, the New York State Comptroller has identified numerous faulty assumptions with the implementation of restructuring in New York.[12] The "bad idea" theory is that the generic restructuring model is a market-faith-based approach premised on flawed market models. Whether substitution of these markets for setting reasonable rates is a bad idea in concept or a big mistake in implementation, there is no sign they will work soon in a manner that serves consumers and the public interest, or that their results are better than cost-based regulation.

States with the chance to do so are pulling back from the brink of restructuring. Meanwhile, as of this writing, New York City was heading into another summer with likely 30 percent bill increases, and possible deferral of more—despite the Governor stating that last summer's double-digit bill increases were "outrageous," and the Mayor of New York City saying a repeat of that is "unacceptable." After numerous attempts at market fixes, New York City energy spot market prices reached $1,000 per MWh in March 2001.[13] As stated by a utility with fixed stable rates for electricity, "the New York wholesale electric energy market, like a train without brakes, is on a volatile, high-priced track leading toward possible derailment."[14]

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IV. The Disconnection

Yet, unswerving faith in the restructuring model lingers. Social scientists call such disconnection between an ideal belief system and reality "cognitive dissonance." It is "the mental conflict that occurs when beliefs or assumptions are contradicted by new information. The unease or tension that the conflict arouses in a person is relieved by one of several defensive maneuvers: *the person rejects, explains away, or avoids the new information, persuades himself that no conflict really exists, reconciles the differences, or resorts to any other defensive means of preserving stability or order in his conception of the world and of himself* [emphasis added]."[15]

Are we now observing the classic "defensive maneuvers" characteristic of cognitive dissonance?

A. Reaffirmation of the Faith and Rejection of Adverse Information

Stay the course. These are just bumps in the road. The California experience is really good for deregulation. The California governor is offered political support by a generator under investigation for price gouging if he will blame the failures on faulty execution by the prior administration and proclaim continued faith in deregulation.[16] Pay no attention to legislators and consumer advocates calling for regulators to set just and reasonable rates, instead of devising and tinkering with market substitutes, for they are rent-seeking panderers to the masses. We should be "letting go" of naive efforts to set prices. "It is again a matter of trust: trusting the free market and trusting free-market entrepreneurs. Trust grows with experience."[17]

B. Explaining Away

It had to happen. It is simply a matter of supply and demand. It was the unusually dry weather

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and low hydropower resources. The problem was natural gas prices. There was still too much regulation. We didn't deregulate enough.[18] "The problem lies in the failure of the participants to construct a market."[19] It was foolish for utilities to buy so much in the short-term markets; they should have bought in other markets for long-term power that will mature, someday. Arithmetic comparison of peak load with capacity is not enough; price spikes are really needed to signal that new generating plants must be built. "The small customer can't realize the benefits of deregulation in the current halfway state."[20]

C. Avoiding the New Information

Rates (for delivery service) are going down. Our state ranks high on the deregulation index. Our state is not like California because we have a surplus of generation capacity and do not import power. Our state is not like Montana because we haven't yet allowed our utilities to divest their generating plants. Rates in our state have not gone up because we have price caps for a while longer. The ISO (independent system operator) spot markets in our area are working very well—except for 50 to 60 hours a year. Capital is available in the market to provide future electricity supply needs, so we need not require utilities to build plants. Our state is not like California because we let the utility pass the short-term price spikes through to customers. Our state is not like California because . . .

D. Attempts to Reconcile the Ideal with the Real

The faith that competition would bring at least as good service at a better price for all is being discarded as myth, and rapidly. "It's time to stop squabbling and raise everybody's rates a lot."[21]

"[C]onsumers are going to have to see what the real prices of energy are if they're going to respond to competition. There can be positive benefits by having people see what their electric rates are over time."[22]

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"[D]uring a transition phase, as the free market increasingly takes effect, *certain consumers may have to pay higher prices, before they pay less* [emphasis added]."[23]

Similarly, the idea that converting a fragile physical grid, built on assumptions of cooperation, to mirror huge numbers of financial transactions, without affecting reliability, has fallen by the wayside.[24] After all, the power goes off at peak times in many countries for millions of people. U.S. electric consumers are spoiled by gold-plating of the system by the old monopolies; they whine and complain whenever the digital clocks flicker. Toughen up or buy your own generator.

V. Toothpaste, Genies, and Market Fatalism

Proposals to stop tinkering with market substitutes for setting just and reasonable rates are answered with sophisticated profundities like "Toothpaste cannot be put back into the tube," and "The genie cannot be put back into the bottle." Those who acknowledge the failures of redelegating the rate-setting function to markets nonetheless urge regulators to disregard their duty under existing law to fix reasonable rates, positing without evidence that regulatory action makes matters worse. Ironically, the debate is over whether regulators should set bidding limits in their faulty markets, which they were not charged by law to create, rather than whether it is time for regulators to enforce democratically adopted laws they swore—and are paid—to uphold, which require *them*, and not their market devices, to set just and reasonable rates. Proponents of the toothpaste, genie, and greater government failure theories ignore that most states with traditional cost-of-service regulation of vertically integrated electric monopolies are doing just fine. A growing consensus is also emerging that utilities cannot so easily shed their statutory and common law obligations. It is not enough just to provide the wires, because the nature

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of their calling and the law requires full and adequate electric service upon demand at just and reasonable rates.

VI. Public Power

The experience of restructuring sparked new interest in public power solutions. The interests of cities and the utilities that served them were once intertwined. Now, the destiny of world class cities is in serious jeopardy. In vivid contrast to the chaotic situation in most of California, Los Angeles had no blackouts, has had stable prices for nine years, and has a new plan and schedule for upgrading and increasing supply resources and for retiring dirtier plants. In contrast, New York City has unpredictably spiking rates, potential blackouts due to inadequate supply, and no plans in place to meet future needs or to address pollution problems by retiring obsolete inefficient and dirty plants in the city. *If a business with operations in both Los Angeles and New York City values reliable and stable priced electric service, where should it locate a new division? If downsizing, which office should be closed?* Will public power jurisdictions with safe and adequate service at just and reasonable rates prevail in the globally competitive "markets" for business attraction?

VII. Some Good News

Not all the news is bad. There are at least some short-term winners in the marketized electric economy. Customers of British Columbia Hydro received $130 rebates from their utility, which profited greatly from sales in the wholesale markets. Farmers in Washington State are now paid up to $440 per acre *not* to farm. Aluminum companies are being paid $1.7 billion not to make aluminum and to resell their power. Ten thousand aluminum workers are on lengthy paid leave.[25] The Los Angeles Department of Water and Power has no blackouts, maintains stable rates despite rising fuel prices, and improves its financial position by selling its generation surplus in the wholesale market.[26] Montana Power sold its generating plants, is selling its electric distribution system, and is becoming a phone company. Owners of merchant plants report unprecedented gains in earnings.

VIII. Lessons Learned from California and New York

Three California and New York paradigms warrant comparison. There are important lessons to be learned from each.

Lesson 1: Do Not Rely on the Wholesale Spot Markets under FERC Jurisdiction

Part of the restructuring model in both California and New York was for utilities to sell off their power plants and then purchase much of the energy for consumers in a new wholesale poolco spot market. The restructuring models assumed that a wholesale poolco market, while perhaps volatile, would over time work to drive generation prices down near marginal generating cost, and achieve lower prices than could have been achieved under conventional cost-of-service regulation. The wholesale market prices would be deemed just and reasonable by the wholesale regulator, the Federal Energy Regulatory Commission (FERC), in lieu of that agency fixing just and reasonable rates as required by the Federal Power Act. Companies purchasing energy for retail customers would simply pass through the wholesale price.

Contrary to the assumptions, spot market prices soared both in California and New York last summer, far beyond the costs of production, and have remained high. It was assumed that new competitors in the retail market would emerge to offer stable price solutions to customers adversely affected by the volatility of spot market prices for their energy. The new competitors, however, shed their customers in the face of spiking spot markets, and competitive,

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stable pricing options were not available in New York City and in California.

Efforts to contain prices through market reforms and wholesale bid price caps failed both in California and New York. Market participants and regulators agree the spot markets are open to market power abuse, are flawed, and are not working as intended. FERC itself has recommended that utilities shun the FERC-regulated spot markets and meet their purchased power needs through bilateral contracts, and use the spot markets only sparingly to adjust for minor unanticipated needs or surpluses. Jurisdictions may avoid the FERC market prices by physically isolating their grids from federal regulation, as Texas has done.

> By confining their grid to Texas, state utilities also avoided oversight by the Federal Energy Regulatory Commission. . . . "It's just a Texas thing," says Pat Wood III, chairman of the state utility commission and a recent Bush administration nominee to FERC. "We want control of our own destiny."[27]

Example: San Diego Gas & Electric, Con Edison. These utilities divested their power plants and became very reliant on short-term spot market purchases, which the utilities passed through to customers. Last summer, San Diego customer bills doubled and tripled, while Con Edison customers, in the coolest summer in 86 years, using less energy than the prior year under fixed rates, experienced a 43 percent bill increase. San Diego retail customer rates have been capped temporarily, with high energy costs deferred for future recovery. Con Edison energy charges have more than doubled during the multi-year rate plan, from less than 4 cents / kWh to 8.4 cents / kWh as of this writing. Con Edison residential customers were likely to face further double-digit bill increases in the summer of 2001 with energy charges again reaching 12.5 cents / kWh and full service rates reaching 22 cents / kWh.

Lesson 2: Energy Costs Can Be Controlled if Generating Plants Are Not Divested

Divestiture of power plants allowed new owners to sell energy at very high prices in the spot markets. Utilities that have not divested their power plants, and which have enough generation to meet their customers' needs, have not experienced price spikes because their energy prices remain based on the cost of production, not what the market will bear. Areas that have not divested generation and that do not rely heavily on wholesale spot markets can maintain stable prices, though they may be vulnerable to changes in fuel prices. And, if every jurisdiction tries to put itself in a surplus position, like Los Angeles or British Columbia, we may see wholesale prices eventually tumble, creating the foundation for this century's first wave of newly stranded investments.

Example: Los Angeles, Rochester Gas & Electric. These utilities did not sell their generating plants, and did not rely extensively on the spot markets. No price spikes have occurred, and rates have been frozen without jeopardizing the utilities. There are no blackouts, and the utility may profitably sell surplus energy produced into the wholesale markets.

Lesson 3: Retail Price Caps Can Hold if Utilities Hedge Their Market Risks

In California, PG&E and Southern California Edison agreed to rate plans that froze their retail rates. They purchased much of the energy for their customers in the spot markets, but failed to hedge against the possibility that spot market wholesale rates, which were below the frozen retail rates initially, would swing up dramatically. As a result, they utilized the initial arbitrage gains made by buying low at wholesale and selling high at retail from 1998 to 2000, to pay dividends to their holding companies. Now they face bankruptcy of the regulated utility subsidiary because the market shifted and they had to buy extremely

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high at wholesale and still sell at the fixed lower rate at retail.

In New York, the upstate utilities agreed to energy price freezes, but unlike the California utilities, they purchased energy off the spot markets and thus hedged against the risk of spot market upswings. Upstate New York customers saw no rate increases last summer and will see no rate increases this summer, and the utilities were not threatened with insolvency. Once the price caps fade, however, their situation will gradually become more like Con Edison's if they rely on short-term markets to procure energy.

Example: PG&E, Southern California Edison, NYSEG. The two California utilities made billions of dollars for their shareholders and for investments in holding company affiliates by charging customers more for their energy than it cost to acquire it. Heavily dependent upon spot market energy, the California utilities began to pay billions more for the energy in the spot markets than they could charge, were nearly destroyed when they bought high and sold low, and are now being bailed out by the state.

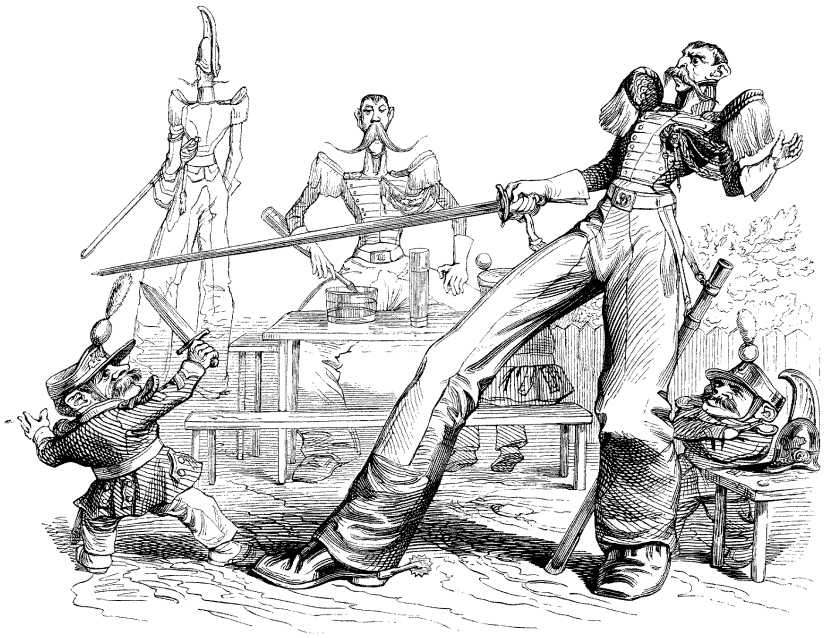
Like the California utilities, NYSEG also agreed to freeze its rates. NYSEG divested all its power plants. But NYSEG hedged its risks and relies minimally on the flawed New York ISO spot markets. The company has proposed to continue the freeze in rates for seven more years with no adjustment for spot market fluctuations or fuel costs. This demonstrates that it is feasible for utilities to hedge their market risk responsibly and set a known benchmark for competition to beat.

IX. What Next?

The state-by-state restructuring trend has halted, and is in disarray as the nation waits for resolution of the California and Western state problems.[28] Most states that were considering restructuring are delaying action. Some urge this crisis presents an opportunity to establish a national restructuring law. But federal legislators were not receptive to a generic national electric industry restructuring model before the current debacle, and are less likely to act now. States satisfied with stable just and reasonable rates for their consumers and businesses are now recruiting companies from states that let their generators run free in FERC territory. Their senators are unlikely now to go down the road of Montana or New York. After the summer of 2000 and the California and New York City experiences, proponents of deregulation looked to states with retail price caps set high enough for competition to make headway. But even for those states, there may be a train at the end of the tunnel when transitional retail price cap obligations are lifted.

X. A Time to Revisit Universal Service Issues and Affordable Rates

Unrepentant restructurers urge now that rates must be increased significantly to make the competition model work, and they extol the virtues of high price signals. In doing so, they are belatedly recognizing some of the disconnect between the ideal and the reality now created. But raising or destabilizing rates to make competition work creates a new disconnection.



The two were nearly destroyed when they bought high and sold low.

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It assumes people can pay the added charges or can reduce their consumption. Unfortunately, for the great numbers of households living with meager incomes and savings, large rate increases are unaffordable. For those whose usage is already constrained by poverty, or out of their control, e.g., their largest appliance is an inefficient refrigerator owned by the landlord, reduced consumption is also unrealistic. Before the rate increases and spikes, these households already had a hard time affording food, rent, medicine, and other essentials. Their incomes are fixed by low-wage jobs, pensions, Social Security, and state welfare programs, which, if they adjust at all, do not adjust as quickly as energy prices are rising. Many of these households will already be on utility deferred payment plans, due to a prior episode, and they are subject to termination if they miss a payment in response to the restructurers' next price signal. They may not be eligible for, or have previously received, the limited benefits appropriated to and administered inconsistently by the states under the federal block grant program funded pursuant to the Low Income Home Energy Assistance Act created to assist low-income households meet rising home energy costs.[29]

Quick gestures, such as increasing emergency appropriations for LIHEAP, will help but not suffice. Most utility low-income rates and assistance programs were not designed to address the new set of problems caused by double-digit increases, and existing programs are not efficiently administered to reach all who are eligible through computer matching. A renewed commitment to universal service at reasonable rates will be needed. The halt of restructuring right now is not merely due to "bumps in the road" on the way to the idealized marketplace. The "bumps" are people. They will be heard. ■

Endnotes:

1. Our approach is to promote a structure in which reasonable prices will be determined by competitive market forces, rather than regulation. Though some price volatility may result, we expect that ESCOs [energy service companies] will offer stable prices if that is what consumers prefer.

NY PSC Case 94-E-0952, Opinion 97–17, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Deciding Petitions for Clarification and Rehearing, Nov. 18, 1997 at 11–12, http://www.dps.state.ny.us/fileroom/doc3346.pdf (July 26, 2001).

2. A few states, notably Massachusetts and Texas, have recognized that competition might bring higher rates to the poor, and shored up measures such as low-income rates. See Barbara Alexander, Default Service: Can Residential and Low-Income Customers Be Protected When the Experiment Goes Awry? (consumer affairs consultant, Winthrop, ME), April 2001.

3. From the start of the deregulation debate consumer advocates warned that the fundamentals of electricity service—'the physics of electrons and the economics of electricity'—make it virtually impossible to create orderly retail markets that will benefit residential consumers.

Mark H. Cooper, *Behind the Headlines of Electricity Restructuring*, Consumer Federation of America, March 2001, at 1.

4. The RED Index measures a state's progress in adopting policies that give consumers the right to choose their electricity supplier. The Index evaluates a state's policy on 22 criteria, which are weighted by importance. The highest score a state can receive is 100. States can receive negative scores for explicitly rejecting a policy of customer choice.

Center for the Advancement of Energy Markets, "RED Index 2001," http://www.caem.org/red_index/red_index_2001.htm (20 July 2001).

5. Few have been willing to challenge the premise that nearly everything should revert to a market." Robert Kuttner, Everything for Sale, The Virtues and Limits of Markets (Knopf, New York: Twentieth Century Fund, 1997), at 7.

6. "[A] massive inexorable force, campaign, movement, or object that crushes whatever is in its path." Merriam-Webster Collegiate Dictionary, at http://www.m-w.com (July 26, 2001).

7. Henry Yule and A.C. Burnell, Hobson-Jobson, A Glossary of Anglo-Indian Colloquial Words and Phrases (New Delhi, India: Manoharlal, 1994), at 466.

8. Despite the coolest July in 86 years, Con Edison's electric bills for residential customers in New York were a scorching 43% higher than during

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last July's record heat wave, the utility disclosed last night.

Con Ed Bills Spike 43%, N.Y. Daily News, Aug. 2, 2000.

9. Richard Rosen, Freyr Sverrison, and John Stutz, *Can Electric Utility Restructuring Meet the Challenges It Has Created?"* Boston: Tellus Institute, Nov. 2000.

10. *Con Ed Is Planning to Fire Up a Plant Known as a Polluter*, N.Y. Times, May 2, 2001, at 1.

11. "The [New York City] marketplace is not competitive at periods of high demand." Notice of Intervention of NY State Public Service Commission, at 5, in *Consolidated Edison Company of New York Inc.*, FERC Docket No. EL-01-4505, March 4, 2001.

12. H. Carl McCall, New York State Comptroller, *Electric Deregulation in New York State, The Need for a Comprehensive Plan*, Feb. 2001, at 36. The "wrong" assumptions were (1) deregulation would mean reduced prices for all customers right away; (2) there was a sufficient supply of electricity in New York State to allow the wholesale and retail markets to mature with a minimum of problems; (3) competition in the wholesale market would immediately stimulate new investments in cheaper, cleaner, more efficient power plants; and (4) competition in the retail market could somehow produce lower prices for consumers without a stable wholesale market.

13. Andrew Caffrey, *States Try to Deter Power Price Gouging: California, New York Weigh Penalties on Generators that Charge High Prices*, Wall Street J., April 30, 2001, at A2.

14. *New York State's Electric Energy Crisis*, New York State Electric & Gas paper, April 2001, available at nyseg.com.

15. *Encyclopaedia Britannica*, http://www.britannica.com (July 26, 2001).

16. *Power Firm's Offer to Davis Denounced*, Los Angeles Times, May 3, 2001. Duke Energy reportedly offered political support and monetary benefits to resolve $110 million in disputed claims if the state would stay litigation and halt investigations into price fixing, suggesting that the governor

> explain the energy crisis to the public by shifting blame to his predecessor"[The governor] will continue to indicate that the California crisis is an aberration due to flawed legislation of Gov. Wilson, not a necessary consequence of deregulation, and will not advocate scrapping deregulation in wholesale power markets.

17. Robert B. Catell, Keyspan CEO,

When Will Small Customers Really Benefit from Deregulation? remarks at National Energy Marketers Association Conference, Washington, DC, April 3, 2001.

18. Robert Kuttner, (*supra* note 5), identifies reactions of "marketizers" to obvious market failure: (1) there was no failure, the market was working, and this result "must be," (2) something (lingering regulation) interfered to prevent the market from working, (3) a more market-like solution must be found, and (4) any efforts to fix the problem will only make matters worse.

19. New York Independent System Operator, FERC Docket No. ER00-1969-000 Concurring Opinion, Commissioner Hebert.

20. *Supra* note 17.

21. *Gas Prices, Utility Woes Contribute to Economic Downturn in California*, Contra Costa Times (Walnut Creek, CA), April 30, 2001, quoting Severin Borenstein.

22. *Deregulation and Weather Fail to Cool Electric Rates*, N.Y. Times, Aug 22, 2000, quoting N.Y. Public Service Commission chair).

23. *Id.*

24. George C. Loehr, *Ten Myths about Electric Deregulation: Electrons May Seem Imaginary, but Reliability Is Real*, Pub. Util. Fortnightly, April 15, 1998, at 28. "[I]t's far more likely that deregulation and restructuring will lead to major degradation in bulk power system reliability." *Id.* at 32.

25. *River's Power Flows South, Fueling California and Profiting Northwest*, N.Y. Times, May 1, 2001, at A1.

26. While the California Public Utilities Commission has approved two electric rate increases so far this year for the two largest utilities in California, these rate increases will not affect DWP customers who enjoy stable rates that have remained unchanged for nine years. The rolling blackouts from power shortages that have occurred in other parts of California will not be felt by DWP customers. DWP provides electricity and water to the city's 3.8 million residents.

Los Angeles Department of Water and Power, *Daily Energy Update*, May 1, 2001, http://www.ladwp.com/whatnew/dwpnews/050101.htm (July 26, 2001).

27. Alexei Barrionuevo and Russell Gold, *Charged Up: Texas May Face a Glut of Electricity, but That Won't Aid Rest of U.S.—Pride and Policy Make State a Magnet for Power Plants and an Island unto Itself*, Wall Street J., May 7, 2001, at A1.

28. Rebecca Smith and John R. Emshwiller, *California Isn't the Only Place Bracing for Electrical Shocks*, Wall Street J., April 26, 2001, at 1.

29. 42 U.S.C. §§ 8621 *et seq.*

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