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May 5, 1997

The Honorable John D. Dingell
Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U. S. House of Representatives
Washington, DC 20515

Dear Representative Dingell:

RE: Commerce Committee Survey

Enclosed are the responses of the Arkansas Public Service Commission to the Commerce Committee survey on federal legislation affecting the electric utility industry. I hope this information will be helpful to you.

If you or your staff have any questions regarding the responses, please feel free to call Mary Cochran, Staff Attorney for the Commission, at (501) 682-5846 or Richard House, Senior Policy Analyst, at (501) 682-5825.

Sincerely,

A handwritten signature in black ink, appearing to be "LRS", written over a horizontal line.

Lavenski R. Smith
Chairman

LRS/jr

Enclosure

Arkansas Public Service Commission
Response to Survey of the United States House of Representatives
Committee on Commerce
John D. Dingell, Chairman
May 6, 1997

1. Has your Commission or State legislature considered or adopted retail competition? If retail competition is occurring at this point, what effect has it had on consumer prices?

Both the commission and the legislature have informally considered retail competition in the electric industry. Neither has decided in an administrative proceeding or by legislation to proceed with retail competition.

2. Has your State asked Congress to enact legislation mandating retail competition? Has it sought Congressional action to enable or assist it in adopting retail competition? Has it requested or recommended any other type of Congressional action?

No. The state has not asked for any Congressional action to date with regard to retail competition, pro or con.

3. Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by a date certain? If not, what timing and other problems might ensue? What could Congress do to address any such problems?

The issue of jurisdiction over stranded costs has not yet been addressed by the APSC or the courts. However, the APSC has broad jurisdiction over utility rates and services which probably would encompass the issue of stranded costs.

4. Are there any other areas in which your State currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) or the Public Utility Regulatory Policies Act of 1978?

With respect to retail electric competition, Ark. Code Ann. §23-18-101 prohibits a utility from providing retail electric service in another electric utility's service area. That statute poses an obvious roadblock to the adoption of retail competition in Arkansas. With respect to PUHCA repeal, please see the attached letter from the APSC to the Hon. Dale Bumpers.

5. Would any constitutional issues be raised by federal legislation:
 - a. Mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?

No.

- b. Requiring states to conduct a proceeding on retail competition, reserving to the states discretion not to adopt retail competition if they determine doing so would not be in consumers' best interests?

No.

6. From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather prior state action?

That depends. If the mandate does not specify or restrict the form of competition, perhaps any problems would be minimal. Undoing a grand compromise, such as the California solution appears to be, may result in a grand mess. On the other hand, state legislatures re-visit issues passed quite often.

7. In hearings before the Energy and Power Subcommittee during the last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large industrial customers are able to negotiate lower rates with state utility commissions, and that the incidence of such rate reductions is on the increase.

- a. Are you aware of any study or analysis relevant to your State that supports this conclusion?

Entergy Corp., a registered holding company, and parent of Entergy Arkansas, Inc., has produced a study, summary attached, that claims the opposite effect.

- b. Please provide any information you can on the historical relationship between residential and industrial rates, the extent to which one consumer class has subsidized another, and whether or not this trend altered in recent years.

See attached summary of average rates. No subsidization studies are available.

8. Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your State, and how they affect various customer class.

The summary table attached for question 7 shows that average rates are falling for all customers, at a rate slightly greater than the rate of inflation.

9. Some proponents of retail competition hold the view that all electricity resources should be sold at a market price and that state authority to regulate retail rates should be eliminated. How would such a policy affect shareholders and ratepayers? What mechanisms could states or Congress employ to manage these issues? In

a restructured electric industry, who should receive the benefits of these low-cost resources — utility ratepayers, utility shareholders or the highest bidder?

We believe that resources used to transmit and distribute electrons, i.e., transmission and distribution systems, should and will remain regulated monopoly resources. Such a policy would benefit both shareholders and ratepayers through market allocation of competitive generation resources. Low-cost generation resources should displace high-cost generation resources, to the benefit of both producers and consumers.

10. Of those states which have adopted retail competition, how many have addressed the issue of “reciprocity”, (that is, whether or not the state can bar sellers located in states which have not adopted retail competition from access to its retail markets)? Whose interests does a reciprocity requirement affect? Is a reciprocity requirement the only way to protect those interests, or are there alternatives? Would such a requirement raise constitutional issues?

If utility A opens its service area to competing generators, but adds a reciprocity requirement to keep utility B from entering A’s market because B has not opened its area to competition, then everyone suffers. But A’s customers suffer less than B’s. Consumers in A’s area have limited choice. Consumers in B’s area have no choice. Producer A faces only limited competition at home with limited opportunities outside. Producer B faces no competition at home also with limited opportunities outside. Reciprocity does not relieve market distortion.

Reciprocity requirements raise constitutional questions as to the burden on interstate commerce imposed by a state's attempt to limit out-of-state business activities within their boundaries. Federally mandated competition would eliminate the necessity for reciprocity requirements.

11. If Congress were to require “unbundling” of local distribution company services as part of a retail competition mandate, what practical problems might this present to state regulators?

State regulators would have to struggle with exactly what unbundling means in this context. It is much more difficult to imagine how retail competition will be accomplished without the unbundling of local distribution services.

12. Does your Commission face particular problems in connection with public power or federal power in an increasingly competitive electricity market?

Yes. Arkansas borders TVA. We take some small amount of power from the Southwest Power Administration. Competing with federal power appears problematic.

13. How would federal legislation mandating competition by a near term date certain affect funding needs for your Commission? If additional funding were needed, would it be available, and what problems might arise if it were not?

Assuming that this commission would need additional resources to achieve a smooth transition to competitive generation markets, and assuming that no additional resources were allocated by the state legislature, creative solutions that achieve more with less would be in order.

14. Has your Commission considered or adopted securitization plans as a means of providing for recovery of utility stranded assets? What risks are inherent in this approach, and who bears them?

No. Securitization may be a reasonable reaction to a situation where ratepayers are forced, perhaps by federal mandates, to pay all of an extant utility's future liabilities. Where the utility in this situation is guaranteed to bear no risk, then securitization can provide the required funds at a lower interest rate by shifting the burden to all taxpayers in the affected jurisdiction away from just the ratepayers.

15. There is wide divergence of opinion as to whether or not PUHCA should be modified or repealed. Given the record level of merger activity, this question may become significant for all state regulators, whether or not they currently have regulatory responsibilities relating to registered holding company activities.

- a. Do you believe PUHCA impedes competition, at the wholesale or retail level? Can "effective competition" be achieved regardless of whether Congress enacts changes to PUHCA?

PUHCA could be considered to impede competition only to the extent that its limits on diversification restrict the entry of large, well-funded monopoly holding companies into competitive EWG and other energy-related markets. However, those same restrictions may encourage other new entrants into those markets. Moreover, PUHCA could be considered to promote competition to the extent that PUHCA limits mergers creating market power.

- b. Do you believe Congress should modify or repeal PUHCA? If s, why, and under what if any conditions?

Please see the attached letter from the APSC to the Hon. Dale Bumpers.

- c. Should Congress enact legislation to modify the holding in Ohio Power Co. v. FERC, 954 F.2d 779 (D.C.Cir. 1992)?

Yes.