

Electricity Deregulation for New Mexico: Repeal or Fix, Don't just Delay!

POSITION PAPER

on deregulation of New Mexico electricity generation

Coalition for Clean Affordable Energy (CCAIE)

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Deregulation is based on the fundamental premise that open competition benefits consumers and the environment with greater choice, better service, and fair pricing, and encourages environmentally friendly, clean energy.

CCAIE believes present New Mexico deregulation legislation must be substantially modified before implementation if it is to satisfactorily meet any of these expectations.

CCAIE proposes the following explicit changes so that deregulation can succeed in New Mexico. They are grouped in the four broad areas deregulation is purported to improve:

- I. Competition that promotes better service*
- II. Consumer protection and fair pricing*
- III. Clean energy development and choices*
- IV. Health of the environment and citizens*

I. Competition: Better service is an anticipated result of true competition. The New Mexico legislation, as currently written, discourages competition among electric utilities in the following specific ways.

1. Meters and billing. Competitive power suppliers are placed at a disadvantage compared to incumbent utilities. This is because competitive power suppliers must provide duplicative services for which they are not permitted to charge.

Therefore, the provisions regarding meters and billing are seen as strongly discouraging competition.

Proposed change:

Make billing and meter reading competitive services under the legislation.

2. Customer data. All existing customer data are treated as the sole property of existing

New Mexico public utilities. This gives them a significant marketing and cost advantage in reaching potential customers. Establishing databases or devising other means of reaching potential customers will be quite costly in time and money. **Therefore, this provision regarding customer data is seen as strongly discouraging the competition.**

Proposed change:

CCAЕ proposes that the legislation mandates sharing of existing databases, in the same manner as has been successful in other states.

II. Consumer Protection: Present legislation does not provide sufficient protections for residential and small business consumers. To avoid a situation similar to what is occurring now in California, CCAЕ proposes the following consumer protections:

1) Rate relief

Residential and small business consumers have low electricity usage and, therefore, little "buying power" in a deregulated marketplace. CCAЕ believes such consumers may be negatively impacted by deregulation unless protections are provided for them to secure stable, fair rates. The California Public Utility Commission has tried both rate freezes and rate hikes in attempts to mitigate the impact of deregulation on small consumers. Nonetheless, these utility customers have experienced skyrocketing electricity rate increases of up to 500%.

Proposed change:

CCAЕ recommends the inclusion in the legislation of a consumer right to "aggregate," as has been successful in other states. Aggregation means groups of consumers, such as neighborhood associations, cities, and small business associations, would be permitted to group together and use their collective purchasing power to secure lower prices through bulk purchase. CCAЕ also suggests the legislation allow individual members of any group to choose not to participate in group purchasing.

2. Out-of-state profits. Many utilities in New Mexico have recorded huge profits from selling excess generation out of state at higher prices (87 percent increase in revenues, 30 percent increase in profits in one quarter alone). However, the cost of building this generation capacity continues to be borne by New Mexico consumers. New Mexicans also are subject to the air and water pollution from these plants, while the majority of the electricity is sold out of state. **Therefore, since New Mexicans paid for the generation assets, and since New Mexicans bear the burden of excess pollution produced by the generation of electricity sold outside the state, profits resulting from the sale of this**

electricity must be shared with New Mexicans.

Proposed change:

CCAIE recommends that deregulation legislation require profits from out-of-state sales by New Mexico-based utilities be used to repay any verified "stranded costs." CCAIE further recommends that a rate cut for New Mexico consumers, funded by profits from out-of-state sales, be mandated by legislation. Rate sharing has been mandated in the past and is part of present mandatory New Mexico regulations. If deregulation is delayed and includes a rate freeze, as seems likely, sharing out-of-state profits can be an important consumer protection. If sharing is implemented before full regulation occurs, during any delay, it will help to return consumer investment in power plants to those consumers and will help cushion the cost impacts when full deregulation occurs.

III. Clean Energy Development and Choices: The present legislation offers insufficient incentives for development of clean energy sources, such as wind, solar, geothermal, and distributed generation and co-generation. Such development is necessary to insure real competition and sufficient consumer choice. Current legislation allows a variety of restrictions, described below, that will strongly discourage competition from green energy production and greatly reduce business opportunities.

Background: A 1998 poll by PNM found 80% of New Mexico consumers support a surcharge of \$1.40 for renewable power, and 30% are willing to pay as much as \$8.75 more a month. In recognition of wide consumer interest in renewable sources, Pennsylvania, California, Colorado, Wisconsin, and Texas, recently implemented significant programs, under both regulated and deregulated markets, to increase the installation and use of clean energy. A significant number of customers now purchase so-called "green power" at a modest premium.

1. Few available resources. Present legislation recognizes the necessity for a clean energy component. However, at present, no significant renewable energy sources are available to utility consumers in New Mexico.

Proposed change:

A strong Renewable Portfolio Standard (RPS) should be mandated by the legislation to insure that at least a minimum baseline of 5% renewable energy be offered consumers at a reasonable price. The rate should be set so as to foster renewable energy development but low enough to be affordable.

2. Power purchase by utilities. The present legislation permits utilities to pay unreasonably low prices for power purchased from on-site power generation, called "buy-

back." These restrictions severely limit investment in renewable energy.

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Proposed change:

It is recommended that utilities be required to purchase excess power from alternative energy producers at current-market, time-of-day rates. For example, solar electricity produces the most excess in summer peak hours when utilities charge the highest rates to their customers. Purchase of renewable power at market rates will help level the playing field.

3. Capacity limitation of on-site generation. Power generation by small units at a consumer business or home is made *arbitrarily* noncompetitive by the present legislation because the legislation allows severe, technically unsubstantiated limitations on capacity (10 kilowatts).

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Proposed change:

Robust, affordable, and safe interconnection technology now exists for on-site generation. CCAE proposes that restrictions of on-site power generation capacity be imposed only in special, documented cases, such as existing environmental restrictions or lack of utility transmission and distribution capacity.

4. Unreasonable charges to power generators: Under current legislation, existing utilities are allowed to charge unspecified, fluctuating rates for hookup to the utility delivery system. Existing utilities may charge "inspection," "plan review," and "hookup" fees, which effectively shut alternative power producers out of the marketplace.

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Proposed change:

CCAEC recommends that the legislation require a reasonable plan-review charge be set by the Public Regulation Commission, with any changes linked to a recognized inflation index. CCAEC further recommends hook-up fees be eliminated from the legislation. In addition, CCAEC suggests hook-up requirements be based on a third party, nationally recognized interconnection standard, as have been adopted by other states (e.g. Texas).

IV. Environment and Health: The legislation as presently written allows increasing environmental impacts be borne by New Mexico for electricity produced here, though the vast majority is shipped to higher-priced markets. Satellite photos show the heaviest air pollution concentrations of sulfur dioxide and nitrogen oxide in the U.S. on the east and west coasts - and in Four Corners. [*National Air Pollution Trends, 1900-1998, U.S. EPA*]

1. Disclosure of environment and health effects. Present legislation does not require sufficient disclosure of the environmental and health effects of the various types of energy

to be offered to consumers. Studies and experience in other states show that consumers select green energy by a ratio of seven-to-one when given the choice. **Therefore, the weak disclosure requirements in the legislation are seen as barriers to informed consumer choice, including the choice of green energy to help New Mexico environment and health.**

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Proposed change:

CCAIE is proposing mandatory requirements for disclosure of energy sources, emissions, and impacts to health and the environment. CCAIE calls this "labeling," and is similar to required food labeling. This allows consumers to make informed energy choices.

2. Suspension of environmental regulations. Under present legislation, serious electricity shortages could occur in New Mexico. Though we currently have excess capacity, deregulation legislation does not prevent all New Mexico-generated electricity being sold in other markets. For example, California has the greatest demand in the region and commands the highest prices. Despite the fact that California electricity demand is no higher this year than last, prices have risen sharply, indicating the "shortage" may have been contrived in order to raise prices. Right now, the majority of the power produced in New Mexico is transported out of state, where much higher prices mean huge profits. For example, PNM reports an 86% increase in profits in 2000 ["Outlook," *Albuquerque Journal*, Oct. 19, 2000]. Electricity "shortages" are having expected effects. The Governor of Washington is calling for increased flows through dams and increased power plant production and suspension of environmental regulations, despite expected negative impacts on fish and air quality. Washington State officials are "sending emissaries to California to ask that state to relax its air pollution rules" [transcript, National Public Radio, "All Things considered," December 12, 2000] **Therefore, the nature of a deregulated, open marketplace is expected to lead to shortages, real or contrived. Shortages that lead to suspension of environmental standards will further negatively impact New Mexico air and water quality and the health of its citizens.**

Proposed change:

CCAIE proposes the inclusion of language in the legislation that disallows suspension of environmental regulations except in cases of national emergency or natural disaster.

CCAIE comprises eight environmental and public interest organizations in the Southwest, representing over 10,000 New Mexico members. CCAIE was founded in 1997 to protect the environment, encourage clean, renewable energy development, and act as a watchdog on behalf of the public as utility deregulation is implemented.