

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

OPINION NO. 95-7

CASE 94-E-0952 - In the Matter of Competitive Opportunities  
Regarding Electric Service.

OPINION AND ORDER ADOPTING PRINCIPLES  
TO GUIDE THE TRANSITION TO COMPETITION

Issued and Effective: June 7, 1995

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STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

COMMISSIONERS:

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(Issued and Effective June 7, 1995)

BY THE COMMISSION:

INTRODUCTION

The purpose of this proceeding is to examine competitive opportunities for electric service, in order to investigate issues related to a future regulatory regime.<sup>1</sup> The overall objective is "to identify regulatory and ratemaking practices that will assist in the transition to a more competitive electric industry designed to increase efficiency in the provision of electricity while maintaining safety, environmental, affordability, and service quality goals."<sup>2</sup> The parties were asked "to work collaboratively to identify a few

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<sup>1</sup> Case 93-M-0229, Order Instituting Phase II of Proceeding (issued August 9, 1994). The case number has since been changed to 94-E-0952, in order to accurately reflect that the subject matter is limited to electric service, although the case started out addressing both gas and electric service.

<sup>2</sup> Ibid., pp. 1-2.

comprehensive principles to guide the transition."<sup>3</sup> After considering a set of principles discussed by the parties during a collaborative process, we issued a revised set of proposed principles for written comments.<sup>4</sup> This opinion analyzes those comments and adopts a final set of principles to guide the transition to competition.<sup>5</sup> These principles should provide helpful guidance during the next part of the case, in which the parties are examining issues related to both wholesale and retail competition.

#### PROCEDURAL HISTORY

This proceeding was originally established to address a number of issues related to competition in the energy marketplace.<sup>6</sup> The first phase in this proceeding resulted in the issuance of an opinion and order adopting general guidelines for the sale of electricity at flexible rates to customers with competitive opportunities.<sup>7</sup> A second phase of this proceeding was established to investigate issues related to the future regulatory regime in light of competitive opportunities for electric service.

In instituting the second phase of the proceeding, we saw a need for general principles to be used in establishing an overall framework for the future; and we referred to similar

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<sup>3</sup> Ibid., pp. 2-3.

<sup>4</sup> Case 94-E-0952, Opinion No. 94-27 (issued December 22, 1994). Originally comments were due February 1, 1995, but in response to a request for an extension of time, the new deadline was March 17, 1995. Appendix A lists the 32 parties that filed comments on the proposed principles. Appendix B is the set of principles that was issued for comment.

<sup>5</sup> Appendix C is the set of principles we adopt.

<sup>6</sup> Case 93-M-0229, Order Instituting Proceeding (issued March 19, 1993).

<sup>7</sup> Case 93-M-0229, Opinion No. 94-15 (issued July 11, 1994).

principles that were being used to guide the development of competition in the telecommunications area.<sup>8</sup> The parties were asked to work collaboratively to develop such principles, with the understanding that the principles might "form the basis for the development of a framework for movement toward a more competitive marketplace."<sup>9</sup>

During September and October 1994, the parties participated in four day-long meetings to discuss proposed principles. Agreement was reached on separating the proposed principles into eight categories: resource management, customer service, reliability and safety, competitive market characteristics, regulatory issues, transition issues, economic efficiency, and economic development. Issues were narrowed and tentative agreement was reached in many areas. In others, however, sharply divergent views appeared irreconcilable. The parties commented on a draft set of principles that was circulated on October 19, 1994. On December 22, 1994, a set of proposed principles was issued formally for comment. Comments were received from 32 parties. A summary of the comments is attached as Appendix D.

#### OVERVIEW OF COMMENTS

In general, two principles were the subject of numerous comments. First, many parties are concerned about the principle declaring the current industry structure, in which power plants are vertically integrated with transmission and distribution, to be "incompatible" with effective wholesale or retail competition. Second, some parties

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<sup>8</sup> Case 93-M-0229, Order Instituting Phase II of Proceeding, p. 2, citing Case 29469, Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition, Opinion No. 89-12 (issued May 16, 1989), mimeo pp. 3-7.

<sup>9</sup> Case 93-M-0229, Order Instituting Phase II of Proceeding, p. 3.

disagree with the statement that the utilities' reasonable opportunity to recover expenditures and commitments made pursuant to their legal obligations depended on their "cooperation" in furthering all of the principles. They are equally concerned about the statement that "similar cooperation by independent power producers (IPPs) should result in respect for the reasonable expectations of their investors."

Many parties support a set of principles similar to the one that the parties had developed together. While consensus was not reached, the parties, in the spirit of the collaborative process, seem willing to accept much of what they had developed as guiding principles.

The summary of comments in Appendix D provides considerably more detail about the parties' arguments and suggestions. What follows are, first, a description of the overall modifications to the set of principles that was issued for comment and, then, an explanation of each specific change, principle by principle. The set of principles we adopt is attached as Appendix C.

#### OVERALL MODIFICATIONS

After carefully reviewing the parties' comments and recognizing the broad range of viewpoints expressed, we remain convinced that our proposal's underlying themes are valid and that they offer proper guidance in the transition to a more competitive environment. These guidelines continue their strong commitment to a sound transition to bringing the benefits of competition to New York. We have modified the wording of several proposed principles in response to comments received in order to prevent unintended misinterpretations and to ensure adequate flexibility in shaping the transition to help avoid adverse impacts. We emphasize as well the interdependent nature of the nine principles and the need to see them as a set, rather than individually.

A number of comments were received about the wording

of the "primary principle," which highlights our paramount concern over the economic and environmental well-being of New York. The first principle states that competition will further the State's economic and environmental well-being. That adequately addresses our intention.

SPECIFIC CHANGES

Each specific change is noted in the following set of principles (which is single spaced and is marked to show the deletions and additions):

In accordance with the Commission's mandate that all New Yorkers must have access to reliable and reasonably priced electric service provided safely, cleanly, and efficiently, the following guiding principles apply in the transition to a more competitive electric industry:

1. Competition in the electric power industry, ~~at least at the wholesale level~~, will further the economic and environmental well-being of New York State. The basic objective of moving to a more competitive structure is to satisfy ~~all~~ consumers' interests at minimum resource cost. Prices should therefore accurately reflect resource costs, and ~~all~~ consumers should have a reasonable opportunity to realize savings and other benefits from competition.

First, many parties<sup>10</sup> are concerned that the reference to the benefits of competition at the wholesale level might be interpreted as excluding the benefits of retail competition. We intended no such distinction, and we expect competition at either level to benefit New York. To avoid further confusion in this regard, the phrase "at least at the wholesale level" has been deleted. The parties should examine potential benefits of both wholesale and retail competition during the remainder of this proceeding.

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<sup>10</sup> These parties include the Attorney General of the State of New York, Columbia University and New York Energy Buyers Forum, the New York State Consumer Protection Board, Enron Capital & Trade Resources, Joint Supporters for Local Generation and Energy Efficiency, May Department Stores Company, Multiple Intervenors, and Nassau/Suffolk Water Commissioners Association.

Second, Department of Public Service staff and the Public Utility Law Project, among others, believe the words "all" in the second and third sentences might imply an assurance that benefits would flow to every individual consumer, a result that might not be achievable. Deleting the word "all" in both places avoids the potential to mislead.

2. The Commission should strive to minimize "bill shock" for any class of customers. A basic level of reasonably priced affordable service must be maintained, especially for people living in poverty. for all New Yorkers.

The first change involves the substitution of the word "priced" for the word "affordable." This wording avoids any potentially troublesome need to decide whether electric service is actually "affordable" for particular customers and accurately reflects our mandate to ensure electric service at just and reasonable rates.<sup>11</sup> It does not, however, diminish in any way our concern to ensure adequate protections for customers who are unable to afford basic electric service. New York has a distinguished history of ensuring such protection for those who may face financial difficulties, and this will continue regardless of industry structure.

The second change is to delete the reference to "people living in poverty," and replace it with the phrase "for all New Yorkers." Several parties pointed out that the term "poverty" is imprecise and does not comport with the terminology used in current assistance programs. Here, too, the wording change avoids confusion but does not alter the intention of the principle.

3. Increased emphasis should be placed on ~~Either~~ market-based means or competitively neutral approaches ~~or public programs~~ to preserve research, environmental protections, cost effective energy efficiency and fuel diversity. ~~must be developed.~~

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<sup>11</sup> Public Service Law §65.



In response to comments by Department of Public Service staff about the meaning of "public programs," this principle has been clarified by substituting the phrase "competitively neutral approaches." The concern was that "public programs" could be misinterpreted to preclude cost-effective utility programs to achieve the enumerated goals. The phrase "competitively neutral approaches" is intended to recognize that competition may erode subsidies. Therefore, funding approaches will be designed that are consistent with the transition to competition. Additionally, these approaches are intended to cover the more traditional type of governmental regulation. This principle is consistent with our strong commitment to pursuing environmental protections wherever warranted.

Since the principle, as proposed, could have been misinterpreted to imply that no effective programs existed to address these goals, it has been re-worded to make clear that what it calls for is an "increased emphasis" on such programs.

4. The integrity, safety, reliability, and quality of the bulk electric system should not be jeopardized. ~~Customer service quality cannot be compromised without customer consent.~~

The last sentence is unnecessary in light of the statement in principle 5 regarding increased customer choice of service and pricing options.

5. Any new electric industry structure should provide:
  - (a) increased consumer choice of service and pricing options;
  - (b) a suitable forum for promptly resolving consumer concerns and complaints;
  - ~~(c) strong incentives to improve transmission and distribution technology and efficiency; and~~
  - (c) leeway for approaches that reflect the differences that exist among New York electric utilities.

Some parties were concerned about the meaning of the requirement for strong incentives to improve transmission and distribution technology and efficiency. While this may offer guidance with respect to the method of regulating non-competitive services, this section of the principle is not needed as guidance in the transition to competition.

6. With more competition should come less regulation, although the transition requires vigorous fair trade safeguards and heightened awareness of the need for forward looking labor management interaction. All market participants should be subject to fair and consistent laws, rules, and regulations. Mechanisms should exist to identify and correct anti-competitive behavior. Where monopoly remains, emphasis on performance-based regulation is preferable to traditional rate cases should continue.

Several parties questioned the relevance of a reference to labor-management interaction. While we expect and encourage creative labor-management dealings and have no reason to believe they will not take place, this phrase does not need to be included in these principles and it is therefore deleted.

Since the reference in the last sentence to "traditional rate cases" was found to be unclear, the wording has been changed to refer to the continuation of the current emphasis on performance-based regulation.

7. The current industry structure, in which most power plants are vertically integrated with natural monopoly transmission and distribution, must be thoroughly examined to ensure that it does not impede or obstruct development of ~~is incompatible with~~ effective wholesale or retail competition.

This language recognizes the potential anti-competitive risk presented by integration but ensures that before a conclusion is reached regarding structuring, the issue will be fully examined. As part of the collaborative

process, the parties are currently developing models for restructuring, with complete awareness of our strong concern about the existing vertically integrated structure.

8. Utilities should have a reasonable opportunity to recover prudent and verifiable expenditures and commitments made pursuant to their legal obligations, consistent with these principles. ~~as long as they are cooperating in furthering all of these principles. Similar cooperation by independent power producers should result in~~ There should also be respect for the reasonable expectations of independent power producer investors and other market participants. Utilities and independent power producers should share responsibility ~~be responsible~~ for taking all practicable measures to mitigate transition costs. The transition should balance order, deliberation, and speed.

There was vigorous objection to both the requirement of "cooperation" and its lack of definition. The revised principle refers to the need for utilities to act consistently with the principles, which reflect the Commission's primary interest in a sound transition to a competitive environment. Respect for reasonable expectations of all market participants, including IPP investors, has now been made clearer. Finally, responsibility for mitigation of transition costs has been broadened to include not only utilities but also independent power producers.

9. Pro-competitive policies should further economic development ~~(defined as "activities tending to enlarge the average disposable personal income of New Yorkers")~~ in New York State.

The definition of economic development was objected to by several parties, including the New York State Department of Economic Development, as providing little guidance. The New York State Department of Economic Development has responsibility in this area and further definition from this Department is unnecessary.

TIMING OF ISSUES  
TO BE ADDRESSED NEXT

We have previously expressed our concern that this case move forward expeditiously, given its great importance to the future well-being of New York.

The case has now arrived at a point permitting translation of that concern into a specific schedule.

In anticipation of setting a schedule for the continuation of the proceeding, the parties submitted to the Judge their proposals for process and timing.<sup>12</sup> The Judge reported that the proposals varied dramatically. Multiple Intervenors' suggestion was that the entire process could be completed by December 29, 1995, with hearings ending September 20, 1995. Independent Power Producers of New York, Inc. proposed that hearings be held in January 1996, a recommended decision issued in April 1996, and a Commission decision issued in July 1996. Department of Public Service staff suggested an extensive period of collaboration, until November 1, 1995, with the issuance of a recommended decision by December 22, 1995 and a Commission decision in early 1996. The Energy Association, at the conference on March 2, 1995, suggested that a more realistic schedule would extend the period for collaboration until April 15, 1996.

We are particularly interested in the continuation of the collaborative process, which has great potential to lead to innovative public policy solutions. We understand that the parties are currently discussing preliminary proposals for restructuring New York's utilities, and that these models will be narrowed to those that should be explored in greater detail.

We can well appreciate the need to proceed deliberatively and thoroughly in developing these proposals,

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<sup>12</sup> In advance of a conference held on March 2, 1995, proposals were requested by the Secretary in the Notice of Conference issued January 24, 1995. They were due February 22, 1995, and 14 such responses were received.

in light of the critical need to fully evaluate such issues as reliability, economic consequences and federal/state jurisdiction. However, moving expeditiously toward completing this analysis is equally important. In light of this, we expect a recommended decision or report to be completed by the end of 1995, setting forth a full description of the proposed model or models for restructuring the electric industry, along with the potential benefits and risks of each.

CONCLUSION

We adopt the set of principles to guide the transition to competition for electric service, attached as Appendix C. We emphasize the need for the parties to work expeditiously on the issues presented in this proceeding.

The Commission orders:

1. The principles attached as Appendix C are adopted.
2. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY  
Secretary

PARTIES THAT FILED  
COMMENTS ON PROPOSED PRINCIPLES

AlliedSignal, Inc., Amorphous Metals (AlliedSignal)  
American Forest & Paper Association (American Paper)  
American Wind Energy Association (American Wind)  
Association for Competition in Electricity (ACE)  
Attorney General of the State of New York (AG)  
Citizens Advisory Panel (CAP)  
Cogen Energy Technology L.P. (Cogen)  
Columbia University and New York Energy Buyers Forum  
(Columbia)  
Electric Generation Association (EGA)  
The Energy Association of New York State and its Member  
Electric Companies (Energy Association)  
Enron Capital & Trade Resources (Enron)  
Independent Power Producers of New York, Inc. (IPPNY)  
Interested Lenders  
International Brotherhood of Electrical Workers (IBEW)  
Joint Supporters for Local Generation and Energy Efficiency  
(Joint Supporters)  
May Department Stores Company (May)  
Multiple Intervenors (MI)  
Municipal Electric Utilities Association of New York State  
(Municipals)  
Nassau/Suffolk Water Commissioners Association  
(Nassau/Suffolk)  
New York Power Authority (NYPA)  
New York State Consumer Protection Board (CPB)  
New York State Department of Economic Development (DED)  
New York State Department of Public Service Staff (staff)  
New York State Energy Research and Development Authority  
(NYSERDA)  
Owners Committee on Electric Rates (Owners Committee)  
Public Interest Intervenors (PII)  
Public Utility Law Project (PULP)  
State Supervised Housing for Equity in Electric Rates (SSHEER)  
Suffolk County (Suffolk)  
United States Department of Energy and United States  
Environmental Protection Agency (DOE-EPA)  
Utility Workers Union of America, Local 1-2 (Utility Workers)  
Wheeled Electric Power Company (WEPCO)

COMMISSION'S PROPOSED PRINCIPLES  
(Issued 12/22/94)PRIMARY PRINCIPLE

The economic and environmental well-being of New York State is of paramount concern here. That is the primary principle, the one that cannot be compromised to accommodate the others.

PROPOSED PRINCIPLES

In accordance with the Commission's mandate that all New Yorkers must have access to reliable and reasonably priced electric service provided safely, cleanly and efficiently, the following guiding principles apply in the transition to a more competitive electric industry:

1. Competition in the electric power industry, at least at the wholesale level, will further the economic and environmental well-being of New York State. The basic objective of moving to a more competitive structure is to satisfy all consumers' interests at minimum resource cost. Prices should therefore accurately reflect resource costs, and all consumers should have a reasonable opportunity to realize savings and other benefits from competition.
2. The Commission should strive to minimize "bill shock" for any class of customers. A basic level of reasonably affordable service must be maintained, especially for people living in poverty.
3. Either market-based means or public programs to preserve research, environmental protections, cost effective energy efficiency and fuel diversity must be developed.
4. The integrity, safety, reliability, and quality of the bulk electric system should not be jeopardized. Customer service quality cannot be compromised without customer consent.
5. Any new electric industry structure should provide:  
(a) increased consumer choice of service and pricing options; (b) a suitable forum for promptly resolving consumer concerns and complaints; (c) strong incentives to improve transmission and distribution technology and

efficiency; and (d) leeway for approaches that reflect the differences that exist among New York electric utilities.

6. With more competition should come less regulation, although the transition requires vigorous fair trade safeguards and heightened awareness of the need for forward-looking labor-management interaction. All market participants should be subject to fair and consistent laws, rules, and regulations. Mechanisms should exist to identify and correct anticompetitive behavior. Where monopoly remains, performance based regulation is preferable to traditional rate cases.
7. The current industry structure, in which most power plants are vertically integrated with natural monopoly transmission and distribution, is incompatible with effective wholesale or retail competition.
8. Utilities should have a reasonable opportunity to recover prudent and verifiable expenditures and commitments made pursuant to their legal obligations, as long as they are cooperating in furthering all of these principles. Similar cooperation by independent power producers should result in respect for the reasonable expectations of IPP investors. Utilities should be responsible for taking all practicable measures to mitigate transition costs. The transition should balance order, deliberation, and speed.
9. Pro-competitive policies should further economic development (defined as "activities tending to enlarge the average disposable personal income of New Yorkers") in New York State.



PRINCIPLES TO GUIDE THE TRANSITION TO  
COMPETITION FOR ELECTRIC SERVICE

In accordance with the Commission's mandate that all New Yorkers must have access to reliable and reasonably priced electric service provided safely, cleanly and efficiently, the following guiding principles apply in the transition to a more competitive electric industry:

1. Competition in the electric power industry will further the economic and environmental well-being of New York State. The basic objective of moving to a more competitive structure is to satisfy consumers' interests at minimum resource cost. Prices should therefore accurately reflect resource costs, and consumers should have a reasonable opportunity to realize savings and other benefits from competition.
2. The Commission should strive to minimize "bill shock" for any class of customers. A basic level of reasonably priced service must be maintained for all New Yorkers.
3. Increased emphasis should be placed on market-based means or competitively neutral approaches to preserve research, environmental protections, cost effective energy efficiency and fuel diversity.
4. The integrity, safety, reliability, and quality of the bulk electric system should not be jeopardized.
5. Any new electric industry structure should provide:
  - (a) increased consumer choice of service and pricing options;
  - (b) a suitable forum for promptly resolving consumer concerns and complaints; and
  - (c) leeway for approaches that reflect the differences that exist among New York electric utilities.
6. With more competition should come less regulation, although the transition requires vigorous fair trade safeguards. All market participants should be subject to fair and consistent laws, rules, and regulations. Mechanisms should exist to identify and correct anticompetitive behavior. Where monopoly remains, emphasis on performance-based regulation should continue.

7. The current industry structure, in which most power plants are vertically integrated with natural monopoly transmission and distribution, must be thoroughly examined to ensure that it does not impede or obstruct development of effective wholesale or retail competition.
8. Utilities should have a reasonable opportunity to recover prudent and verifiable expenditures and commitments made pursuant to their legal obligations, consistent with these principles. There should also be respect for the reasonable expectations of independent power producer investors and other market participants. Utilities and independent power producers should share responsibility for taking all practicable measures to mitigate transition costs. The transition should balance order, deliberation, and speed.
9. Pro-competitive policies should further economic development in New York State.

SUMMARY OF COMMENTS ON PROPOSED PRINCIPLES  
CASE 94-E-0952OVERVIEWAssociation for Competition in Electricity (ACE)

Transition should be guided by the following broad objectives: All consumers should choose suppliers; Access to transmission and distribution (T&D) must be on a non-discriminatory common carrier basis; T&D should continue to be regulated and rates should reflect costs; generation should be deregulated and separated from T&D; Commission should foster change for benefit of consumers.

Commission should (A) implement an experimental retail competition program; (B) require mandatory transmission access; and (C) recommend new legislation.

Is in general concurrence with the principles, but need to act on expedited basis to take action to bring about needed changes.

American Forest & Paper Association (American Forest)

Has interest as large customers, self-generators, and cogenerators; applauds goal to increase competition and thereby reduce rates. Need robust competitors. Fears piecemeal and short-term approach to restructuring may kill opportunity for real competition. Can't reverse process if badly structured competitive experiment fails. If retail competition ultimately introduced (which is desirable outcome), industry must be properly structured. For genuine competition, must separate generation from transmission and distribution (T&D) as in other countries. Should require divestiture of generation. With retail competition, continuing need for Commission oversight of any divestiture. If no restructuring of ownership, Commission will need to regulate all transactions more substantially to prevent unfair competition and cross-subsidization.

American Wind Energy Association (American Wind)

Wind power could become least-cost source of electricity within 10 years, unless electric industry restructuring is insensitive to potential impacts of such technologies. Competition is best means of fulfilling resource needs and public policy goals (not goal in itself). Should begin with truly competitive wholesale market, which doesn't yet exist.

Criteria for restructuring models: Ensure fair competition; impose public power requirements on all power suppliers; create transmission and dispatch policies that accommodate intermittent resources; foster 10- to 15-year contracts and life-cost cycling; account for environmental impacts; promote "public good" benefits of renewables through public policy; provide for research and development (R&D) and commercialization activities.

Citizens Advisory Panel (CAP)

Supports Public Interest Intervenors' (PII's) comments but writes to emphasize Long Island's (LI's) concerns (high rates; users leaving). Any change must ensure bills are lowered for all LI residents. Doesn't believe substantial reduction in costs can be achieved in short run, but must work for long-term reductions. Current LI energy situation is in crisis. Principles are good starting point.

Columbia University and New York Energy Buyers Forum (Columbia)

1. Basic objective should be to reduce prices to consumers (lower retail prices).
2. Competition in both wholesale and retail markets is necessary, are closely interrelated and should be considered in tandem.
3. Competitive market controls should replace regulation where actual competition exists. End-user commodity products and services should be controlled by competition and resource planning should be supplied by competition. Transmission and distribution (T&D) is not competitive and regulation is still needed, but should be designed to maximize benefits of competition (prices should be cost-based, open non-discriminatory access should be mandated and assured, charges should be unbundled).
4. Competitive market exists for end-user commodity products and services in both wholesale and retail markets. Should immediately adapt existing regulatory framework to accommodate this reality. Transition costs may be incurred, yet must be legitimate and verifiable, equitably shared, and shouldn't delay progress.
5. Specific factors applicable to electric industry do not

make transition any more complex than for other industries (like gas and telephone). Issues such as taxation and environmental requirements can only be addressed by Legislature and appropriate regulatory agencies. Since can't be resolved by Commission, existence shouldn't be barrier to prompt transition.

New York State Consumer Protection Board (CPB)

Generally agrees with Commission's appraisal of challenges faced by industry, but concerned about absence of explicit commitment to overriding purpose: to lower prices for all consumers.

United States Department of Energy  
and United States Environmental Protection Agency (DOE-  
EPA)

Generally supported draft of proposed principles developed by working group and are concerned with substantial changes in those issued by Commission.

Electric Generation Association (EGA)

Strongly applauds proposed principles as drafted; reflect appropriate balance among competing objectives and interested; supports adoption unchanged. States should adopt policies and models of regulatory reform that are mutually consistent in promoting efficient, open regional markets in bulk power, as sought by framers of EPAct. Should adhere to "well-crafted set of principles."

The Energy Association of New York  
State and its Member Electric Companies (Energy  
Association)

Need to explore opportunities for increased competition--time of dynamic change; pressure to move supply from regulation to more competition (excess capacity); prices have increased by policies using utilities as "vehicles to achieve various political and social objectives;" shouldn't lightly discard current structure and system of regulation, need to be mindful of complexity of system.

Issues raised are controversial and require careful analysis; significant change would affect wide range of interest, including regulators. Utilities recognize potential benefits and their interests would be most affected by more competitive industry.

Supports use of collaborative process (First: benefits can be achieved by efforts to understand and accommodate various interests; can clearly define and understand various positions; can narrow areas of disagreement. Second: issues would be addressed most productively when proposals and ideas can be freely discussed.) Important to explore objective analysis of issues collectively, with benefit of careful analysis and best advice from parties and experts. Principles phase was difficult but productive.

With clear ground rules, support continuation of collaborative process. But need commitment that process will be objective, with no predetermined conclusions and participation will not foreclose basic right to contest issues when necessary.

Its original proposed principles provide proper framework. Deeply concerned about Commission's proposals, on substantive and procedural grounds. They include significant provisions not seen before, without explanation or comment; some include factual and policy conclusions without benefit of careful analysis. Raise concerns that collaborative process may result in significant changes with enormous consequences without utilities' consent and without opportunity to contest changes.

Essential that parties be assured that if disagreement on significant matter, parties will have full opportunity to contest and to raise related factual, policy or legal issues and to develop full evidentiary record.

Recommendations: Against adoption of proposed principles (insufficient basis and prejudge significant issues); should allow parties (in well-defined collaborative process) to determine solutions to significant issues; adoption would undermine cooperative effort thus far achieved (and would create unnecessary obstacle to effective participation).

Proposed principles previously recommended by Judge will provide significant guidance and that may be all that is required (also, proceeding is dynamic process; information and analysis may result in changed position; imposing principles may inhibit free flow of ideas and fluidity). Should allow proceeding to move forward. If Judge finds that absence of a set of principles inhibits progress, she can advise Commission.

Alternatively, Commission should refer issue of principles back to Judge and parties, and request report and further

recommendation.

Enron Capital & Trade Resources (Enron)

Principles are well-crafted and properly balanced. Should be adopted as soon as possible. Generally supports IPPNY's comments.

Independent Power Producers of New York, Inc. (IPPNY)

Commission accurately captured most of substance of the consensus reached by the parties, and moved beyond that consensus "to arrive at common-sense conclusions that will greatly expedite the process by which these principles are converted into useful policy." Suggests some changes but, in spirit of cooperation, would support principles without modification. Urges Commission to adopt unchanged as final guiding principles.

Agrees that competition and expanded customer choice are better for customers than regulation. Need strategy coordinated across government.

Any move to significantly expand retail competition before correcting wholesale deficiencies could be premature. But advocates of expanded retail competition should present proposals adhering to basic principles.

Interested Lenders

Disappointed with principles because they don't "adequately reflect a policy of regulatory respect for existing contracts." Should embrace respect for existing agreements to promote stability, consistency and to mitigate risk associated with regulatory uncertainty (all of which affect financing and, ultimately, consumer costs).

International Brotherhood of Electrical Workers (IBEW)

Commission's proposals are not consistent with proposals submitted to the parties, which reflected discussions and submissions of the parties.

Joint Supporters for Local Generation and Energy Efficiency (Joint Supporters)

Not all principles have statutory underpinning and are consistent with existing law. Commission needs to preserve existing competitive forces and recognize rights of all

players (including self generators and competitors using alternative fuels). Some principles have anti-competitive effect and should be withdrawn. Commission should endorse statutory principles (all rates must be just and reasonable; goal of rate setting should be achieving "efficient price;" generation is not natural monopoly; excess capacity should not be in rates; rates provide utility with reasonable opportunity to earn fair return and can't discriminate unreasonably; laws favor gas consumption and fuel diversity; can't charge customers for services not purchased).

May Department Stores Company (May)

Supports Commission's commitment to encouraging competition in electric industry, particularly development of retail market. Minimization of costs is significant factor in profitability of operations. Reduction of electric costs should strengthen its competitiveness. Also, its success depends on health of State's economy. To a great extent, supports and agrees with proposed principles, and recognizes that they are generally consonant with expectations of participants in collaborative process.

Multiple Intervenors (MI)

Commission correctly envisions competitive industry as one which will provide reliable electric service at lower prices; beyond dispute that prices are too high and hamper economic development; unless meaningful retail competition is established soon, bypass by industrial customers is likely to accelerate. Goal is to reduce retail prices expeditiously and thereby promote New York's economic well-being; competition is the most efficient means to that end. Competition should be encouraged. Now is the time to deregulate and provide open access to generation. Recognizes that transmission and distribution are, and likely will continue to be, monopolies.

Municipal Electric Utilities Association of New York  
(Municipals)

Supports efforts to increase efficiency in provision of electricity, consistent with applicable law and contractual rights.

Nassau/Suffolk Water Commissioners Association  
(Nassau/Suffolk)

All participants are captive, particularly utilities.



Parties should realize all will need to relinquish certain beliefs to advance common good. Uneconomic rates are drag on economy. It is in long term interests of all participants to move to competition which will lower rates. All parties should work together for competition and general prosperity.

New York Power Authority (NYPA)

Generally agrees with numbers 1 through 6, 8 and 9.

Owners Committee on Electric Rates (Owners Committee)

Test should be overall economic benefit of State and locale.

"Commercial real estate in a city like NY is one of the purist competitive plays in entire economy."

Electric service is one of major costs (often largest) of building operations (often exceeding labor). Problems of individual commercial building owners have 2 pronged impact:

- (1) retention and economic survival of tenants
- (2) economic survival of owners, which is basis for employing thousands of working people

Therefore, urges "adoption of the most flexible rules possible to help meet commercial consumers needs."

Public Interest Intervenors (PII)

Supports increasing competition, which can be compatible with energy efficiency investments, acquisition of renewables, and environmental protection, but depends on terms under which restructuring proceeds and incentives created. Retail wheeling is neither inevitable nor desirable and incompatible with environmental stewardship.

Recommended goals: (1) Promote competition to minimize bills (reward solutions that minimize long-term costs rather than focus only on short-term price). (2) Do not encourage wasteful consumption. (3) Ensure equitable treatment of all customers. (4) Reward utility performance rather than spending.

Make certain there is improved alignment of interests between shareholders and society by decoupling profits from sales and creating stronger incentives.

Should have cost recovery mechanism for desirable investments as a non-bypassable, "usage-based system" benefits charge on distribution.

Commission should prepare environmental impact statement, to meet State Environmental Review Act (SEQRA).

Prefers Commission adopt principles parties worked to develop, with minor modifications and clarifications.

Public Utility Law Project (PULP)

Commission rejected much of parties' framework and made substantial language changes and offered own proposed principles for comment. Did not explain why proffered framework was rejected, why various positions of parties regarding specific language was rejected, or factual basis or policy rationales underlying own proposed principles which have ambiguous language. Troubled by lack of reasons for differences, which would have made drafting comments less difficult and allowed for more meaningful input.

New York State Department of Public Service Staff (staff)

Urges the Commission to issue final principles at its earliest opportunity, pointing to issues raised in pending LILCO, Niagara Mohawk and Con Ed rate cases, along with proposals for retail wheeling on Long Island.

Would prefer that the principles staff proposed in comments submitted in October 1994 be adopted.

Suffolk County (Suffolk)

Asks that its October comments be considered also; concerned with Commission's failure to recognize its jurisdictional limits. FERC's plenary jurisdiction over wholesale sales will undermine application of principles to other than retail sales. Should consider Federal initiative and explore ways regulation of retail sales can supplement federal efforts. Federal and state regimes must complement, not hinder, one another in restructuring.

Commission improperly assumes jurisdictional authority in discussing vertical integration. Commission has no authority to dis-integrate New York utilities. Commission has no jurisdiction over utilities selling wholesale power in New York.

Commission should reconsider its view on utilities expectations of recovering certain costs such as taxes, investor return on utility and IPP investments, and environmental and other social obligations. Move to competition should be guided by market forces, not perpetuation of regulatory principles that resulted in high rates. Some expectations are for Legislature to consider.

Recovery of transition costs is difficult issue. Transition measures may be desirable to protect legitimate, prudently incurred costs. Period should be short and measures well-defined. Not all utilities will survive competition.

Any ruling endorsing recovery of stranded investment must conform with state law, including State retail franchise laws.

Commission should proceed quickly to establish policies that foster true competition, with view to lowering cost to ultimate consumer.

Utility Workers Union of America, Local 1-2  
(Utility Workers)

Important principles that do not appear to have been considered by Commission include:

1. Benefits of competition were not documented (economic theory does not necessarily apply to real world). Commission should validate that genuine competition will survive and provide benefits for all customers before undertaking any further transition. No forum has established that increased competition will meet goal of increasing efficiency while meeting safety, environmental, affordability and service quality goals.
2. Fundamental economics may not support safety, environmental and service quality goals plus the competitive provision of service. Existing markets are not competitive because utilities must buy from and finance their competitors.
3. Can't have your cake and eat it too. Environmental and DSM programs are a form of service quality that will be eliminated or at least diminished with competition.
4. Regulatory Structure should be consistent with Industry Structure. Commission should recognize that "cost-based" ratemaking provides a floor price for any

alternative regulation. Makes little sense to change regulatory structure without benefits. Today's high rate problem is mainly result of excess capacity due to IPPs. Ironical that solution is not elimination of known factor, but rather elimination of regulation.

5. Terms and conditions of proposed alternative regulation. Utilities have constitutionally guaranteed safety net of cost-based rates; customers don't have similar constitutional right to appeal for rate reductions. Commission should be concerned with price to be charged for ability to switch back to utility-provided service, and also with operating parameters and time elements. Need to determine goals to be met by new structure, and then devise form of regulation that could best meet those goals.

Wheeled Electric Power Company (WEPCO)

Agrees that competition is generally more desirable than regulation.

Re: taxes--this is not jurisdictional matter to Commission. Erosion of tax revenues as a result of lower prices is legislature's concern. Also, reduction of gross receipts tax revenues is beyond Commission's jurisdiction.

Re: utility investor expectations--no informed investor still owns utility stock as safe investment. Recovery of investment is only justified where utility shows that investment was required by law.

Re: IPP contracts--circumstances of IPP investors are very different from utility investors. Commission must consider alternatives to continuation of contracts.

Re: social programs--recovery for low income assistance should continue to be recovered by utilities in monopoly services. DSM and renewable purchases should not come from ratepayers.

Comparison of national average rates with New York may be misleading. Not only New York utilities collect and pay taxes and subsidies.

PRIMARY PRINCIPLE

**The economic and environmental well-being of New York State is of paramount concern here. That is the primary principle, the one that cannot be compromised to accommodate the others.**

Cogen Energy Technology L.P. (Cogen)

Urges caution in use of word "paramount" -- other things shouldn't be compromised either, such as contracts and the regulatory compact. Also, need to be sensitive to meaning of word "compromise." Long-term well-being of N.Y. may require actions that might not be justified if only short-term impacts were considered. Reliability can be priced; reasonably priced doesn't mean subsidized by other ratepayers. Don't use regulation as tool of social engineering. Legislature should create subsidies if needed. This proceeding should identify legislative changes (federal and state) that are needed or desired to bring about future vision.

CPB

Agrees with this.

Energy Association

Scope and meaning are completely undefined; concerned about conclusory statement that states should initiate and encourage actions to reduce by 50% the amount that prices in New York exceed national average (not based on factual discussion or analysis; need to discuss meaningful price reductions in context of comprehensive plan to reduce incumbent burdens). Plan to reduce prices is legitimate issue to be considered but conclusory statement is premature.

IPPNY

Should acknowledge parties' legal rights are of paramount concern.

PII

Fully agrees with this. Also agrees with need for "a strategy coordinated across government."

Utility Workers

Difficult to see how competition will improve environmental well-being of State, when it will likely eliminate utilities' ability to fund DSM and environmental programs, with no other funding source available. Maintenance of achieving access to safe, reliable, clean and efficient service should be overriding principle.

INTRODUCTION TO PROPOSED PRINCIPLES

In accordance with the Commission's mandate that all New Yorkers must have access to reliable and reasonably priced electric service provided safely, cleanly and efficiently, the following guiding principles apply in the transition to a more competitive electric industry:

PULP

Would move first sentence of principle #1 to this introduction, which would explain general reason for adoption of transition principles. Would replace word "affordable" for word "priced" to conform to Principle #2.

WEPCO

Appropriate to include economic considerations as overriding principle. Urges Commission to take lead in changing State's economy.

1. Competition in the electric power industry, at least at the wholesale level, will further the economic and environmental well-being of New York State. The basic objective of moving to a more competitive structure is to satisfy all consumers' interests at minimum resource cost. Prices should therefore accurately reflect resource costs, and all consumers should have a reasonable opportunity to realize savings and other benefits from competition.

ACE

Primary objective is to bring to generation efficiencies and creativity normally associated with competitive markets; need retail as well as wholesale; "minimum resource cost" should not include any stranded investment.

American Forest

Strongly agrees, so long as competition is fair.

- A. If bidding is adopted for new generating projects, should be judged by independent evaluator. Uncertainty and delay kill projects.
- B. Competitors must be able to firm up capacity on a non-discriminatory basis. Utilities must not be allowed to engage in unlawful "tying" arrangements, which would violate antitrust laws.
- C. Self-service wheeling is consistent with Integrated Resource Planning.

American Wind

Increased competition is means toward fulfilling resource needs and public policy goals, not end in itself. Need to include mechanisms to protect environmental well-being of New Yorkers in competitive market. Would prefer to explicitly recognize issue of environmental costs.

Attorney General of the State of New York (AG)

Appropriately recognizes critical role of competition in furthering well-being, but contains inconsistency in that wholesale level is mentioned in first sentence, while next two sentences mention that all consumers should receive benefits. Competition should benefit both retail and wholesale customers, therefore should delete phrase "at least at the wholesale level."



CAP

Strongly agrees; as PII states, third sentence should be reworded to clarify that goal must be long-term reduction in bills of all end users.

Cogen

If rules governing emissions of pollutants favor older, dirtier plans, objective will be compromised. Cost of nuclear waste needs to be reflected in price of electricity.

Disagrees that basic objective is to satisfy all consumers' interests. Major contributor to current problems is past practice of imposing taxes on 1 segment of consumers (commercial and industrial) and transferring taxes in form of reduced rates to others (residential). Social policy of affordability may best be achieved in other ways. Shouldn't create improper price signals at expense of industrial and commercial users. Taxation should be left to legislature. Consumers should bear own weight and no more, which is consistent with last sentence.

Columbia

Competition at retail level necessary, along with wholesale. Lower prices will motivate utilities to become economically efficient. Focussing on using all approaches to reduce prices is preferable. Agrees that all consumers should benefit from reduced prices, which reflect minimum resource costs, and competitive alternatives.

CPB

Fails to state explicitly that overriding objective is to reduce rates for all customers. use of "minimum resource cost" standard wouldn't necessarily produce lower rates for all customers. Shouldn't include reservation that competition is beneficial "at least at the wholesale level"-- unnecessary and premature.

New York State Department of Economic Development (DED)

First sentence is not principle, but is conclusion and should be re-worded. Guiding principle should be that a basic objective is to minimize resource costs. No definition of "interests." Improbable that ALL consumers' interests will be satisfied (therefore second sentence will obscure rather than guide proceeding).

DOE-EPA

Economic efficiency should be fundamental goal and should benefit all New York residents.

Energy Association

First sentence is conclusory finding, not guiding principle. Need discussion, analysis and careful consideration of extent to which competition can be increased, benefits from specific plans and impact of related interests.

Second sentence is unwarranted. Primary goal of competition is increased economic efficiency (goal presented in proposed principle raises concern that Commission seeks to continue to use close control of industry to achieve public policy objectives).

Third sentence: statement that prices should reflect resource costs raises concerns as to Commission's future role regarding pricing (fundamental premise for movement toward increased competition is that traditional regulation is inefficient).

Enron

Should clarify that competition is appropriate at both wholesale and retail levels. Should eliminate phrase "at least at the wholesale level."

Joint Supporters

Agrees with first sentence but retail and wholesale competition should be studied at same time. Hope third sentence refers to marginal cost pricing. Commission should reaffirm that it will move existing prices toward marginal cost regardless of pace of transition.

May

Strongly believes that full potential benefits won't be realized without competitive retail markets. Competition at all levels should be operating premise. Suggests therefore deleting from first sentence "at least at the wholesale level." Also would omit words "and environmental" since it is not clear that environmental well-being will be affected by competition. Principles should provide for due consideration for the maintenance of environmental values, which is addressed by #3.

MI

First sentence: Must endorse not just wholesale but also retail competition, to achieve fundamental goal of lower prices. Wholesale competition alone does not reduce retail prices.

Second sentence: Basic objective: "to reduce retail prices while meeting consumers' needs for reliable power." Focus of principle should be on price paid by consumers, not producers' resource costs. Cost reduction is essential by-product but primary focus of principles should be on desired goal: lower prices.

Third sentence: First phrase should be omitted to focus on prices paid. Even if costs were referenced, phrase "resource cost" is undefined and should be avoided.

Nassau/Suffolk

Agrees with first sentence if retail competition is included with wholesale, so that all consumers will be able to realize savings and other benefits. Focus should be on maximizing competition which should in turn increase economic efficiency, thereby reducing resource costs.

PII

Would be clearer without changing meaning if phrase "in minimizing life-cycle costs for reliable electricity service" replaced "at minimum resource cost" in third sentence.

PULP

First sentence should be eliminated and added to introduction. Would break remaining 2 sentences into separate principles. "Economic efficiency" is more precise way to state basic objective, but no major objection to using phrase "minimum resource cost." Commission couldn't have meant that purpose of moving to competition is to satisfy ALL consumers' interests, so those words should be omitted. Interests that competition is intended to advance and protect are stated in other principles, which could conflict with these words.

Third sentence has 2 phrases with 2 different concepts (HOW to minimize use of scarce resources; and WHO should benefit from benefits of competition). Should eliminate 1st phrase

because it's implicit in prior sentence (the goal of minimizing resource costs can't be fully achieved without pricing resources at their costs); Commission couldn't literally mean prices should accurately reflect resource costs, because that would mean pricing services on marginal or incremental cost basis (allowing recovery of NO sunk costs). Commission must have meant that prices should reflect resource costs to extent not inconsistent with other principles and should revise principle to so state. 2nd phrase in 3rd sentence suggests that certain customers won't be given priority access to competition at sole expense of remaining customers and should be stated as separate principle.

#### Staff

Supports fundamental maxim, yet offers modifications to improve it. In first sentence, replace "will" with "should" and delete "at least at the wholesale level."

In second sentence, omit word "all," because assurances of benefits to all customers are not necessarily desirable.

In third sentence, would delete phrase that "prices should therefore accurately reflect resource costs," because this is only one technique for minimizing resource costs.

#### State Supervised Housing for Equity (SSHEER)

Competition already occurs at the retail level to a certain extent, the cost of which is borne by captive ratepayers with real restrictions. All customer classes should have same opportunities; should be open retail market.

#### Utility Workers

No record to support claim that competition will further economic and environmental well-being. In fact, there is evidence that a change in utility framework will be inimical to public interest.

#### WEPCO

Any wheeling programs must benefit all customers, but should clarify that limited experiments need not immediately benefit all customers. If retail wheeling is allowed on a limited basis, should include large and small business, government, residential and others at same time.

2. **The Commission should strive to minimize "bill shock" for any class of customers. A basic level of reasonably affordable service must be maintained, especially for people living in poverty.**

ACE

Does not believe "bill shock" is an issue; competition will lead to lower prices.

AG

Agrees with goals, but would delete phrase "A basic level of" in second sentence, since electric service is different from telephone in that the product is indivisible.

American Wind

Endorses this principle.

CAP

Agrees with principle but concerned about wording; use of term "bill shock" sounds like bills are expected to increase. Very important to ensure that this doesn't happen. Real efficiencies must be attained and costs must decrease for all end users. Suggest deletion of first sentence.

Cogen

Worthy objective to minimize bill shock, but rate structure shouldn't be tool of social engineering. Taxpayers should pay, not other electricity purchasers or shareholders. Because of social engineering, NY has highest rates. Taxation should be public process, accomplished by legislatures.

Columbia

If benefits are available to all consumers (as in #1), bill shock shouldn't affect one class more than another. Should add at beginning of first sentence: "during the transition to a fully competitive market for end-user electric products and services."

Second sentence: competition should result in affordable rates; Commission oversight of prices should be limited to prices charged to people living in poverty; therefore should

omit word "especially."

CPB

Should not assume bill shocks are inevitable; lower prices should be available to all consumers. Public Service Law requires just and reasonable rates and principle should so state.

DED

Second sentence should end with "maintained," or should replace "including" for "especially." Low-income programs should be established by the Legislature and funded through taxes.

Energy Association

First sentence: should recognize primary relationship between increased competition and achievement of economic benefits; public policy objectives that impose costs not reflected in prices (if not eliminated) would need to be pursued in a way that is consistent with new emphasis on competition, efficiency and consumer choice.

Second sentence: Does not recognize affect of increased competition on way government responds to needs of low income and poor people (may need broader mechanisms). Shouldn't be decided out of context.

Joint Supporters

Agrees with principle but prefers #2 from working draft of parties.

May

Encompasses two distinct ideas that May supports, but they should be stated as separate principles: bill shock (fundamentally a transition issue) and affordable service for all (a long term social policy).

MI

First sentence: potential for bill shock shouldn't block retail competition. Not every rate increase is bill shock. Short term bill impacts that appear unduly burdensome must be balanced against overriding goal (lower prices for all consumers).

Second sentence: Society as a whole through taxes will assume affordability obligation in competitive market.

Nassau/Suffolk

Bill shock presumably means sudden increase in electric rates. Unthinkable that any customer class on Long Island could experience increase beyond what has already been borne. This concept does not belong in principles. All customers should have affordable service, and Commission shouldn't do social engineering. To help people living in poverty, competition should be introduced quickly.

PULP

Combines 2 goals that should each be stated separately. 1st goal: to avoid "bill shock" (unclear as to meaning when Commission has used term "rate shock" in gas and telecommunications area. "Rate shock" means minimization of large sudden increases in size of customer class's bill resulting from rate changes. Large rate increases from 1 bill to next can have adverse impacts. "Bill shock" appears to be broader, such as sudden increases in size of customer class's bill resulting for any reason including rate increases. Limiting impact of bill shock on customer class basis would omit volatility resulting from unique usage patterns. Not clear if intended to apply also to weather variations.) 2nd goal: "Affordability" involves ability of customer to pay a bill solely on basis of size due to reasons unrelated to timing of increases.

In gas area, Commission recognized rate shock and affordability are different and adopted 2 separate principles, and should do so here. Shouldn't refer to "maintaining" reasonably affordable service, since many households find bills unaffordable. Also, should use term "low-income" which has become a term of art, rather than "people living in poverty" which is unclear.

SSHEER

Affordable service should be provided to all New Yorkers, including institutions that serve basic human needs. Housing stock is critical resource, and electricity costs are enormous burden. SSHEER members should get special relief from high bills.

Staff

Agrees with spirit, but would change phrase "people living in poverty" to "low income customers," to comport with current assistance programs.

Utility Workers

True competition won't coexist with rate subsidization implied by minimizing bill shock. Should also minimize, to extent appropriate balancing all other goals, all adverse impacts.

WEPCO

Bill shock (while undefined) associated with putting uneconomic generating assets in rates caused problem to begin with. Rate shock also needs definition.



3. **Either market-based means or public programs to preserve research, environmental protections, cost effective energy efficiency and fuel diversity must be developed.**

ACE

Commission can continue to achieve public policy goals through T&D (which will still be regulated); environmental regulation of generating facilities will be unaffected; facilities continue to be regulated by state and federal environmental agencies; fuel diversity will be met by market in part or market-based solutions can be used.

AG

Endorses goals set forth in principle, but market should be preferred to public programs to achieve them. Public programs should only be employed when public would benefit, but user is unlikely to purchase it without additional incentive.

American Wind

An attractively simple means of enhancing environmental protection and ensuring fuel diversity would be a tradeable minimum Renewables Portfolio Standard for power suppliers.

CAP

Reword as PII states.

Cogen

With competition, no government intervention is needed to assure research and cost effective energy efficiency. Should be no demand side management programs except those put in place by energy purchasers. Generally true of research as well.

Protection of environment WILL require government intervention, but may not need to be as extensive as in past. Competition can play large role in best solutions.

Competition will also accomplish certain degree of fuel diversity. But in short run, one technology and fuel will be favored over others. Not sure if fuel diversity is worth associated costs. Need to publicly examine and debate purposes to be accomplished by fuel diversity.

Columbia

Most areas listed are attainable through market mechanisms, except arguably environmental protection (which should be met through even-handed application of laws and regulations, which are not Commission's responsibility). Would alter principle to separate competitive service from non-competitive (T&D). As to competitive services, would rely on marketplace mechanisms "to meet short-term and long-term goals and commitments relating to long-term resource costs, fuel and technological diversity, renewable resources, research and development, energy efficiency, and to equal consideration of cost effective supply and demand options." As to T&D, should rely on traditional regulation.

CPB

Should state "to the maximum extent feasible, market based means should be developed. . ." Market based mechanisms would lower rates and equalize regulatory requirements for all competitors. Shouldn't encourage status quo by recommending public funding of programs in rates.

DED

Doesn't sufficiently emphasize that programs designed to meet public policy goals and commitments should include minimization of long- and short-term resource costs, and should use marketplace mechanisms to maximum extent feasible. If market mechanisms not feasible, market-based incentives should be used before public programs.

DOE-EPA

This matter is of greatest concern to DOE-EPA, which appears to be abbreviated version of working group's proposal, yet the Commission did not intend to depart from substantive content. Prefers former wording. Concerned because it provides no assurance that Commission will achieve to seek economic benefits of competition in matter that is consistent with environmental protection, energy efficiency, and other public policy goals. Seems inconsistent that none of nine proposed principles have reference to public policy goals, when primary principle says environmental well-being is of paramount concern. Urge Commission to provide assurance that New York's environmental quality and progress toward environmental goals are not adversely affected by transition to competition.

Energy Association

Shows no recognition that approach to public policy objectives may need to change with increased competition. Pursuit of social objectives needs to be harmonized with new environment. Principle omits necessary balance, and suggests maintenance of existing public policy goals regardless of continued appropriateness.

Joint Supporters

State Energy Plan and laws already mandate these programs. Commission should commit to enforce these laws.

May

Agrees that development of competition should occur in a way that doesn't needlessly prevent or inhibit attainment of these objectives (which must be fully identified and defined) in sound and economical manner. However, Principle #3 should recognize that competition itself will naturally enhance attainment of these objectives; also, existing State and federal laws are intended to provide for attainment of most of the objectives.

MI

Does not oppose public programs but Commission shouldn't mandate any public policy that must be achieved in competitive market; if public programs are needed to accomplish goals listed, Legislature should develop programs and fund them with taxes.

Nassau/Suffolk

Will be continuing need for public programs, but Commission should encourage market based solutions. Only where compelling need and failure by market forces should Commission force regulatory solution.

New York State Energy Research and Development Authority  
(NYSERDA)

Strongly supports this principle. This will "help promote economic growth and further commitments to environmental protection, energy efficiency, high service quality, safety and availability of affordable electric service to consumers." California Energy Commission had hearing on Research, Development, and Demonstration, and NYSERDA gave

information on a potential model for state energy RD&D (testimony attached to comments).

PII

Unacceptable. Recommends: "Given pervasive market barriers to least-cost investments, either market compatible initiatives or public programs must be developed to preserve research, environmental protections, cost-effective energy efficiency and fuel diversity."

PULP

No proposed language changes, but observes that "market-based means" includes recovery of costs through appropriate pricing of monopoly bottleneck elements (assuming vertical integration).

SSHEER

Should preserve fuel diversity options at level of end-use facilities, including possibly using efficiency money for fuel substitution.

Staff

Should modify to make clear that it is not intended to preclude cost effective utility investments in energy efficiency, environmental protection or research; also should explicitly state that increased emphasis should be placed on market based means; and should delete term "public programs" because it is unclear and undefined.

Utility Workers

Commission's ability to mandate achievement of goals of research, environmental protection and cost effective energy efficiency and fuel diversity will be limited at best.

WEPCO

Supports principle that programs associates with DSM and renewables should be funded outside revenues from captive ratepayers. Moving to market based structures will improve economics.

4. **The integrity, safety, reliability, and quality of the bulk electric system should not be jeopardized. Customer service quality cannot be compromised without customer consent.**

ACE

T&D will still be regulated; need to establish Regional Transmission Group to replace New York Power Pool.

AG

This is fundamental. Raises question of how to determine that customers are willing to trade off service quality for lower rates, but this may be addressed in rest of proceeding.

American Wind

Endorses this principle.

CAP

Strongly agrees. Would strongly oppose any lower service quality being imposed without a customer's explicit consent.

Cogen

Agrees that service quality shouldn't be compromised without customer's consent. Converse is also true -- customer should know cost of service quality and have opportunity to forego it. Service quality should be subject to market forces. Doesn't understand what is meant by "integrity" of bulk electric system.

Columbia

Agrees with principle, however, should define "bulk electric system" and "customer service quality."

CPB

Supports this principle.

DED

Second sentence should be re-worded to be clear that minimum level of service quality could not be compromised with customer consent.

Energy Association

First sentence: Important and fairly stated.

Second sentence: Not compatible with more competitive industry; sets forth conclusion prior to consideration by parties. With more competition, may need to change aspects of service quality now imposed by Commission. Should be considered by parties in relation to specific restructuring proposals.

Joint Supporters

Customers can differentiate needs for reliability and quality of service. Market forces will determine price.

May

Encompasses two distinct ideas that May supports, but they should be separately stated: maintaining system quality and accommodating market choices.

MI

Supports principle; only would add word "express" before customer consent.

Nassau/Suffolk

Supports without reservation.

PULP

Strongly disagrees with unqualified endorsement of allowing customers to compromise service quality. Some customers will increase risk to health, safety and welfare to save money. Must determine minimally acceptable level of service quality necessary to protect public health, safety and welfare, and have in place sufficient enforcement mechanisms to enforce them.

SSHEER

Reliable electric service is extremely important.

Staff

Acceptable as written, although views bulk power system and local customer service issues as two distinct topics, worthy of individual principles.

Utility Workers

Strongly supports this principle. Should be moved up in order of principles. Caution regarding second sentence: customers who at one time are willing to accept low service quality must not be allowed a "zero-cost opportunity to transition to higher-quality service at later times."

WEPCO

No objection.

5. **Any new electric industry structure should provide:**  
(a) increased consumer choice of service and pricing options; (b) a suitable forum for promptly resolving consumer concerns and complaints; (c) strong incentives to improve transmission and distribution technology and efficiency; and (d) leeway for approaches that reflect the differences that exist among New York electric utilities.

ACE

Retail competition will bring additional benefits along with lower prices. Increased attention will likely be given to improving efficiency and effectiveness of T&D (and they will continue to be regulated). No need to adjust restructuring for any differences among utilities.

AG

Competition should by its nature take care of (a), (c) and (d), but additional measures may be needed to ensure (b).

AlliedSignal, Inc., Amorphous Metals (AlliedSignal)

Particularly supports proposed principle 5(c) stating there should be strong incentives to improve transmission and distribution technology and efficiency. It is consistent with the primary principle, and conforms with the Energy Policy Act of 1992, section 111(a). Transmission and distribution will continue to be regulated as a monopoly. Commission should establish regulations providing incentives for utility investment in cost-effective transmission and distribution. Also, 1995 Energy Plan should include this. Incentives (such as accelerated cost recovery, shared savings, and standard offer rates) are important to encourage cost-effective transmission and distribution efficiency investments. Any incentive must be based on performance rather than expenditure, and encourage utilities to develop ways to achieve all available cost-effective energy efficiency improvements.

American Wind

Endorses (a) as broadly stated here but creating a truly competitive wholesale market should have priority over retail wheeling. Balance acceptable as is.



CAP

Supports goals, but concerned about wording (sounds as if major segments will be deregulated as opposed to having price set competitively). Would strongly oppose elimination of Commission's role in resolving consumer complaints. Commission still will have important role in ensuring safety, reliability and availability of service to public.

Cogen

Supports (a), (b), and (d). Not clear that strong incentives to improve transmission and distribution (T&D) technology and efficiency needed. Competition not likely to be in areas of T&D. Any incentives in these areas should be determined by users. If Commission still regulates T&D, should seek input from users and suppliers to determine whether systems are adequate.

Columbia

In competitive market, most objectives listed in principle will be outside Commission's power. Should add sentence at end stating that during transition, increased customer choice of service and pricing options must be offered.

CPB

Supports (a), (b), and (c), with understanding that incentives mentioned in (c) do not increase rates or prices. Can't endorse (d) because scope is unclear.

DED

(c) should read "strong MARKET-BASED incentives..."

Energy Association

(c) not discussed by parties; impossible to know meaning without further elaboration. Impact of specific restructuring proposal on T&D technology and efficiency (if needed) should be addressed, but no basis for conclusion that "strong" incentives are needed. Term "incentives" in unexplained. This and methods used to resolve consumer complaints in competitive environment should be left to consideration by parties.

IPPNY

Re: (d) No objection to allowing different approaches but shouldn't allow some principles to be entirely compromised as a result.

Joint Supporters

Should also state that where there is a competitive alternative, it would be allowed without obstruction. Should consider requiring T&D tariffs and wheeling contracts, to force issue of market rates.

Since competition will result in lots of petitions, Commission should aim for swift resolution.

May

(a) Is somewhat redundant and could be combined with second sentence in #4. (c) Is also somewhat redundant and could be combined with #3. (d) Appears to inappropriately presuppose maintenance of current industry structure (not justified and could restrict scope of case; could be amended to state that any new structure provide maximum leeway feasible for participants to choose time, place and manner they will compete).

MI

Generally supports; but (c) needs clarification ("incentives" shouldn't allow utilities to charge T&D rates that exceed embedded cost plus reasonable rate of return; utilities shouldn't be given incentive payments for improving monopoly services they are required to provide).

Nassau/Suffolk

Supports without reservation.

PULP

No suggested changes.

SSHEER

Need increased choice of service and pricing options. Simple measures like level bill payments are not enough. Need new pricing options like hourly pricing. Want protection from gouging situations. Need remedial mechanisms.

Staff

Suggests minor language changes to clarify principle in (a), (b), and (c); as to (d), believes Commission's intent is to ensure flexibility to accommodate different approaches to account for variations and would add word "accommodate" at beginning.

Utility Workers

Not clear that competition produces increase consumer choice. This was not true in airline industry.

WEPCO

Increased customer choice is important argument for retail wheeling. Improvement of T&D system is very important.

6. With more competition should come less regulation, although the transition requires vigorous fair trade safeguards and heightened awareness of the need for forward-looking labor-management interaction. All market participants should be subject to fair and consistent laws, rules, and regulations. Mechanisms should exist to identify and correct anticompetitive behavior. Where monopoly remains, performance based regulation is preferable to traditional rate cases.

ACE

In general agreement. Commission should narrowly define its jurisdiction (may need legislation). Commission will have to determine market abuses and when subsidies are required to maintain service quality.

AG

It is not agreed that performance-based regulation is better than traditional rate cases. Could conclude incentive awards have been major contributors to increased rates. Should instead conclude last sentence by saying "Commission will continue to establish just and reasonable rates."

American Forest

To ensure robust competition for bulk power, Commission must use its regulatory powers to provide level playing field. Agrees that with more competition should come less regulation, to extent that competition is widespread and fair (need appropriate balance between prescriptive and market-based regulatory tools). Any restructuring proposal must preserve sanctity of regulatory scheme established by PURPA. Commission has no authority to abrogate existing long-term QF contracts. With no new independent generating projects, no possibility of real competition (but wouldn't object to creating incentives to get parties to renegotiate or restructure high-priced contracts). Important players will be power marketers who buy and package bulk power to sell at wholesale. Need safeguards and effective regulatory oversight in restructuring proposals. Should resist temptation to focus only on short-term price reductions for bulk power.

CAP

Supports general principle, but concerned with implication that role of regulation is reduced to price regulation. Commission also plays important role in ensuring long-term planning objectives and regulating safety and reliability. Also, concerned about Commission's prejudging merits of performance-based regulation as opposed to other models, without any practical experience.

Cogen

Agrees that with more competition should come less regulation. But not clear need heightened awareness of need for forward-looking labor-management interaction. Performance based regulation would suggest less public involvement in labor-management. Where competition has made less regulation possible, even less involvement is needed.

Columbia

Should be redrafted to clarify which areas will rely on market forces, and which will continue to require regulation. For T&D, should provide needed guidance for interface with competition (rates set at no higher than marginal cost, open and non-discriminatory access, and priced unbundled).

Commission doesn't have authority to assure that participants are subject to fair laws and rules (at best, can encourage Legislature and other agencies to develop consistent laws and rules).

Commission has inadequate experience to be sure performance-based regulation is preferable to cost-based regulation.

With #7, utilities may no longer own generation, but during transition, charges for generation shouldn't have chilling effect on development of competition.

As to correction of anti-competitive behavior, principle merely acknowledges existence of mechanisms under current anti-trust laws and calls on Commission to ensure that regulated markets assure open and non-discriminatory access.

Desire to achieve this goal should not be reason to delay or impede process.

CPB

Has two major flaws: failure to define effective competition and preference for performance based regulation. CPB provides suggested definition of effective competition, including statement that it protects consumers from exploitation by sellers. Performance based regulation has generally resulted in higher rates in New York.

DED

In first sentence, should delete phrase after "safeguards" as it is not a principle. Should also state all participants should be subject to fair and consistent laws and rules to create level playing field.

Energy Association

One of the most crucial issues is regulatory reform (current system of regulation is incompatible with effective competition and has imposed enormous costs). Principle doesn't include important concept that control over pricing and provision of service will have to decrease with more competition.

The requirement of "vigorous fair trade safeguards" is of concern (no explanation of term; no identification of authority to define and impose such safeguards). Raises concern of excessive and ongoing Commission intervention.

"Labor-management" reference is unclear as to meaning, to whom it would apply, and who would enforce it.

Last sentence may be true but wasn't considered by parties, and performance based regulation requires definition and analysis before generally accepted. As currently practiced, tends to reward companies for implementing public policy objectives, even if effect is increased cost. Need full discussion to understand meaning and effect on increased competition and efficiency.

IBEW

Could jeopardize meaningful jobs of thousands of IBEW members; with more competition before less regulation, industry will suffer. Should say "With less regulation more competition will naturally develop..." Also, statement about heightened awareness of labor-management interaction needs clarification (leads one to assume bias to current

state of labor-management affairs; members in utility industry have outperformed those in non-regulated industries).

#### Joint Supporters

In agreement with principle.

#### May

Economic efficiency gains will perforce enhance employment opportunities for State as a whole; unsure of need for language about "forward-looking labor-management interaction." Also, in second sentence should add that laws and rules need to be "non-discriminatory."

#### MI

First sentence: During transition, regulation must protect consumers by assuring there is no anti-competitive behavior; when there is full retail competition for generation, consumers' right to choose supplier will be effective consumer protection. However, labor-management interaction should not be addressed in principle (this is up to utilities and labor unions).

Second sentence: Not needed to state in principle, although supports concept. If stated, should specify that intent is not to impose greater obligations on nonutility market participants than currently exist.

Third sentence: Clearly appropriate; concept must be understood in context of anti-trust laws.

Fourth sentence: Even after full retail competition in generation, T&D will remain monopolies; principle should clearly state that pricing should be based on providers' embedded costs plus fair return in order to avoid abusive pricing.

#### Municipals

Must be revised to reflect that not all energy providers are participants in same market, nor are they under Commission's jurisdiction, nor should they be subject to same laws and rules (assumptions in principle are unfounded and unnecessary for competition to develop; competition requires equal access by competitors, not equal competitors; instead of promoting level playing field, Commission should

eliminate barriers to entry in specific markets). Allegedly inconsistent laws and rules are not major barriers to more competitive bulk power market even if Commission had authority to alter laws or abrogate contracts.

Transition must be coordinated with other regulatory agencies and subject to applicable laws. Commission must respect contract law.

#### Nassau/Suffolk

Agrees that as competition increases, regulation must decrease. Self interest of management and labor should product cooperative relationship requiring no interference from government. Federal and state laws exist to correct anti-competitive behavior, which are adequate to ensure level playing field. No need to create new mechanisms. To extent monopoly remains, regulation should be performance based. Micro-management is inappropriate and inconsistent with market discipline over rates. For meaningful competition, Commission must loosen reins of regulation.

#### PULP

Strongly supports because it recognizes: the need for a level playing field; that dislocation of labor must be avoided; and that performance based regulation is superior to traditional rate base/rate of return regulation. But last sentence needs modification to clarify that what is meant by traditional rate cases is traditional rate base/rate of return regulation.

#### SSHEER

Existing laws and rules provide many safeguards; do not want to see performance based regulation eliminating all periodic opportunities for public scrutiny.

#### Staff

Agrees with substance but suggests changes to simplify and clarify it; would omit first sentence and replace with the following: "As competition increases, regulation should be decreased;" would omit last sentence as unnecessary since principles are intended as broad ones for the transition; in third sentence, would add language to refer to "anti-competitive and other forms of unfair behavior during and after the transition to competitive energy markets."



Utility Workers

Disagrees with assumption that traditional rate cases are somehow inferior to other forms of regulation. No basis for conclusion that performance-based regulation is superior to traditional regulation. Strong reason to believe that utilities don't want and can't be forced to accept any form of regulation that does not have, as a safety net, a cost-based floor. Inappropriate to assume that regulation hasn't provided substantial customer benefits.

WEPCO

Should be no regulation over generation where there is no market power. Regulation over monopoly services should continue and be performance-based. All participants in unregulated generation market should be treated in same way.

7. **The current industry structure, in which most power plants are vertically integrated with natural monopoly transmission and distribution, is incompatible with effective wholesale or retail competition.**

ACE

Absolutely critical point; underlies entire rationale for restructuring. With technological and regulatory changes, existing structure has become obsolete and led to higher prices.

AG

Possible restructuring should be considered in rest of proceeding.

American Forest

Strongly agrees that vertical integration is incompatible with effective competition.

CAP

Agrees that current structure tends to impede effective competition for generation, but this fact doesn't dictate what structure would be most effective. See PII's comments.

Cogen

It is axiomatic that owners of natural monopoly T&D can't be allowed to generate and sell on an unregulated basis. Existing generation must be owned by companies that are independent of T&D.

Columbia

Agrees with principle. Deregulation of generation and separating ownership from T&D will force greater efficiency; unbundling of generation is likely to assure that all customers will benefit from deregulation.

CPB

Any such conclusion is premature and contradicts parties' premise that no assumptions about industry structure would be made.

DED

Not a guiding principle; it is a conclusion needing record basis. Not clear whether supports creation of utility-owned generation subsidiaries or divestiture of generation.

DOE-EPA

Not discussed by working group. Support investigation of concept but view as implementation issue rather than principle.

EGA

State regulation of distribution should not impair competition in production segment. Therefore supports functional unbundling of generation.

Applauds Commission for recognition of concerns held by EGA and others; succinctly states one of major problems impeding orderly industry reform. Should be retained in current form.

Energy Association

Most illustrative of utilities' concerns. Parties agreed not to discuss specific structure and principles shouldn't prejudge merits of specific structure. No basis in proceeding for conclusion reached in this principle. Issue needs to be considered, but important related issues (including economics and legalities) need careful analysis. Can't be considered out of context. Utilities don't seek to foreclose consideration, but conclusory finding is vigorously objected to. Potential restructuring is one of the most important issues Commission has ever faced and consideration should be careful and deliberate.

Enron

Strongly agrees with concern underlying principle. However mandatory divestiture of generation is not prerequisite to effective competition.

IPPNY

Must be retained. Joint ownership of generation with T&D is "recipe for self-dealing, cross-subsidization, and otherwise anti-competitive behavior."

First impediment to competitive market is cost-plus ratemaking treatment of generation assets, which can be mitigated by alternative performance-based ratemaking programs. Second impediment is vertical integration.

Commission must eventually reach this conclusion (for reasons explained in paper by National Independent Energy Producers attached to comments).

Vertical integration is formidable obstacle to resolution of stranded investment issues. "Attempts to graft stranded costs remedies onto flawed structure will make stranded investments a perennial not transitional phenomena."

Refutes argument that this principle has no record basis, pointing to its prior proposed principles and comments in the Commission's instituting order and the 1994 State Energy Plan.

If #7 is not retained, should adopt principle stating that components of competitive wholesale market are:

- (i) fair, comparable and non-discriminatory access to transmission;
- (ii) arm's-length spot market price for wholesale power;
- (iii) many buyers and sellers and arm's-length negotiation between all buyers and sellers.

Complete divestiture of generation assets may be way to ensure that T&D companies can't influence competition between generators. (Commission should clarify whether "vertical integration" means divestiture or financial unbundling.)

#### IBEW

If #3 is enacted, current structure might not necessarily be incompatible with effective wholesale or retail competition. Excess capacity came at premium cost due to state and federal regulatory requirements (example: non-regulated utility generator contracts). State can't ignore the past; need to permit utilities orderly transition and be allowed to recover investments (otherwise industry will be competitive only for select few). Fair competition must be pursued. Past wrongs can't be ignored and past commitments can't be abrogated.

Joint Supporters

In agreement with principle.

May

Supports principle, which it believes is self evident.

MI

Supports principle. There is a conflict inherent in vertically integrated utility structure and competition in generation. Must eliminate centralized market power of utilities. Fair access to retail customers through T&D system is needed for retail and wholesale competition. Most recent step in development of competitive generation is National Energy Policy Act of 1992, which resulted in fundamental changes in industry structure and requires change in vertically-integrated utilities.

Nassau/Suffolk

As first step toward competition and deregulation, utilities can't control both generation and T&D. Excessive cost assets must be retired, mothballed or sold and write downs should be reflected as per accounting principles. Non-productive assets must be eliminated from rates as quickly as possible.

As second step, transmission should be separated from distribution, which will retain monopoly characteristics. Transmission companies must have open access and allowed to charge economically efficient rates and build new facilities providing reasonable returns.

Finally, similar classes of retail customers should be allowed to form buying groups for sufficient economic leverage.

NYPA

Agrees that production, transmission and distribution should be unbundled from ratemaking perspective; but this wouldn't necessarily preclude a structure where all are owned by same entity. Can establish safeguards to eliminate concerns about self-dealing and/or abuse of market power. Could be seen as predisposition to particular structure. Should reword to be clear that functional services should be

unbundled.

PII

Separation of generation from T&D (though not absolutely necessary) may be desirable. Essential that wholesale competition occur as soon as possible, which should accelerate retirement of dirtiest and most costly generation and stop discrimination by utilities against cheaper and cleaner resources. Precise structure should be left to rest of proceeding and not stated as principle.

PULP

This proposal is highly troublesome, without comment or explanation. Parties had agreed to leave consideration of restructuring issue to next phase, since depends on principles adopted by Commission. This is premature.

SSHEER

Retail competition may change structures, which is not necessarily unhealthy.

Staff

Objects on number of grounds: (1) not guiding principle, rather a conclusion about market structure as yet unsupported; (2) limits options to be explored which may be inappropriate; (3) appears to advocate for divestiture which may not be feasible. Suggests possible principle stating "the current industry structure is incompatible with effective wholesale or retail competition," or would delete.

Suffolk

Commission has no authority to dis-integrate New York utilities.

Utility Workers

This is not a principle, but a conclusion without record support. Also, not something everyone would agree with. Instead, principle should be rewritten to require analysis and evaluation of vertical integration, and then require determination of what to do next if found to be incompatible with effective competition.

WEPCO

Strongly agrees that ownership of generation and monopolistic control over T&D are incompatible with true competition.

8. Utilities should have a reasonable opportunity to recover prudent and verifiable expenditures and commitments made pursuant to their legal obligations, as long as they are cooperating in furthering all of these principles. Similar cooperation by independent power producers should result in respect for the reasonable expectations of IPP investors. Utilities should be responsible for taking all practicable measures to mitigate transition costs. The transition should balance order, deliberation, and speed.

#### ACE

"Stranded costs" are merely symptoms of failure of utilities to be competitive. Permitting recovery of such costs would be contrary to other principles since would saddle consumers with uneconomic costs.

Standard for considering appropriateness of costs to be recovered should not be traditional "prudence" standard.

Concept of "legal obligation" should not be confused with promises and approvals from lenient regulators.

Important to distinguish between contracts utilities entered into to purchase power from independent suppliers from direct utility investments.

#### AG

Possibly most important issue is recovery by utilities of capital expenditures. Would be preferable to avoid possible market distortions by replacing first sentence with statement that "utilities' capital costs may be recovered to the extent permitted by the market."

#### American Forest

Overly broad; there are problems with attempting to impose "transition costs" on a utility's competitors: large costs can't be imposed on direct access customers or no competition will be possible.

Unclear why and how IPPs must "cooperate" to have their legally effective contracts honored.

#### CAP

Generally agrees, but omits "used and useful" principle; customers deserve "reasonable opportunity" to pay only for



investment that provides benefit to them.

Cogen

Agrees with this. Should recognize that investors in utilities don't have contracts guaranteeing particular rate of return. But still is a regulatory compact, assuring investors a reasonable (albeit somewhat modest) rate of return. They have made trade off in risk. Shareholders shouldn't bear cost of stranded investment if prudently made. With very few exceptions, all investments have been deemed prudent; not appropriate now to question previously approved decisions. Requirement that utilities "cooperate" undermines principles of regulatory compact and holds investors hostage to idea that cooperation is necessary. Should also recognize that investors under old regime wouldn't be willing to invest under new structure. Would be wrong to change risk structure retroactively and strand investments.

Columbia

First part of first sentence appears to be restatement or possible modification of Public Service Law. Since law speaks for itself, should be deleted.

Cooperation shouldn't be only basis for recovery of transition costs. Should be reasonable sharing. Existing contract obligations should be consistent with established legal authority.

Transition costs should not be reason for delaying or impeding progress. Transition must be as rapid as possible.

CPB

Contradicts commitment to reasonably priced utility services; cost recovery not necessarily mandated by "prudence" standard; would undermine principle that utilities take all practicable mitigation measures. Alternative suppliers share cost responsibility with utilities. All suppliers with contract payments over marginal cost of generation should pay exit fee for customers who leave system. Where customers leave system for new suppliers, there should be exit fees for customers and entrance fees from suppliers (during defined period of transition).

Need clear definition of transition costs, such as "any

costs reflected in rates which exceed the marginal costs of service or the competitive costs, whichever is lower."

DED

Should delete phrase about cooperation in first sentence and entire second sentence. Such preconditions not appropriate as principle.

Energy Association

Deals with issue of utmost importance to utilities and is essential to any cooperative effort to restructure industry. Objects to imposition of condition of utility "cooperation" (inconsistent with sound public policy, fairness and well established precedent; suggests paternalistic approach; required "cooperation" is undefined and therefore totally subjective).

Term "legal obligations" is undefined; unclear if this differs from "obligation to provide service to the public." If intent is to limit utilities' opportunity to recover costs incurred to meet public service obligations, it is unjustified.

Unilateral adoption of undefined terms on this important subject is "totally unwarranted and undermines the basis of mutual trust that is essential if this proceeding is to succeed."

Re: responsibility of mitigation--should not be limited to utilities; all parties should be responsible for taking all practicable measures within their power to mitigate costs.

Re: independent power producers: Commission should recognize that they didn't build facilities to satisfy service obligation and haven't devoted property to public service.

Enron

Supports full recovery of prudently incurred stranded investments as long as utilities attempt to mitigate costs to greatest extent possible. Delay creates uncertainty which retards process and allows additional investment.

IPPNY

Although IPPNY doesn't see a problem in "cooperating" with

furtherance of proposed principles, statement suggests a veiled threat that result may be actions to disrespect reasonable expectations of IPP investors. Legal rights of parties are paramount (courts to determine).

#### IBEW

Utilities must have every opportunity to recover prudent and verifiable expenditures; phrase about cooperation may be construed as intimidation; every stakeholder must be treated equally; IBEW would be seriously impacted if utilities were forced to cooperate at expense of employees; State shouldn't forget its obligation to utility workers who are social backbone of communities and are most highly trained and competitive workers in state (must be allowed to compete on level playing field). Economic development can't mean keeping or creating low-paying jobs at expense of meaningful jobs. Must consider impact of low-paying jobs on local economies. "Community Culture Shock" is serious concern. Must consider carefully the societal impact of policy that would sacrifice meaningful jobs for low-income employment. If utility generating assets are written down, transmission assets must be marked up. Stakeholders with most to gain (non-utility generators) should sacrifice the most. To reduce costs, some "social good" Commission projects may need to be compromised. Must honor regulatory compacts with utilities, in order to keep employment contracts made with employees. State can only achieve pricing near national level if state near national level in cost of government.

#### Interested Lenders

Fails to convey regulatory commitment to respect sanctity of contracts; implies investors in energy projects will be "treated fairly" but is ambiguous. Need more definitive statement about respect for sanctity of contracts. Also, inappropriate for Commission to invite disputes over contracts between utilities and non-utility generators by requiring utilities to mitigate transition costs (courts should be forum). Commission must continue to provide stable and predictable regulatory environment. Would be consistent with legal precedents. Finally, Commission's recent intervention in FERC case regarding NYSEG threatens integrity of this proceeding and undermines its purposes. Commission should rehabilitate this proceeding and opportunity for true competition by endorsing scrupulous adherence to power sales contracts, encourage voluntary renegotiation, and eschew intent to force economic

regulation on parties who invested money on the promise of non-interference with their investments.

Joint Supporters

Opposes principle; has no statutory underpinning and violates law. "Transition costs" are opposite of competition. Burden of proof of net transition costs should be on utility or other proponent. Assessing stranded investment charge could be double charging for same expense. Concept ignores that utility's load is dynamically evolving. Should at least await results of evidentiary hearings before deciding this.

May

Generally supports principle; but concept of "cooperation" was not considered in collaborative process and should be submitted to parties for fuller consideration rather than be adopted as principle.

MI

First sentence: Utilities should have reasonable opportunity to recover costs imposed by law or regulation, providing utilities demonstrate the costs were mandated. Issue is whether utilities should have reasonable opportunity to recover uneconomic assets (where book values exceed market values). Utilities are not guaranteed recovery of all prudent costs. First need to ask which costs are results of management decisions rather than imposed by law or regulation. In competition, shareholders bear burden of management decisions. Principle should also clarify that burden of establishing which costs are "stranded" is imposed on each utility, and utility shouldn't have any presumption of recoverability. Not all assets will have market value below book value. Once recoverable costs are identified, need to recognize fluid nature. Availability of retail generation competition may halt or limit departure of customers and reduce size of stranded investment.

Last phrase about cooperation should be deleted. If no cooperation, legal responses are appropriate.

Second sentence: Should be omitted; implies incorrectly that IPPs must take further steps for contractual rights to be honored (contractual obligations should be addressed by parties or the courts).

Third sentence: Appropriate and hopefully self-evident.

### Municipals

Must be revised to make clear that utilities don't have a substantive right to seek stranded investment costs and, more importantly, that sunk costs can only be sought from utility's appropriate customers, not public at large. Municipals bear own generation and distribution costs and are transmission-only customers of some utilities. They shouldn't bear costs.

### Nassau/Suffolk

This, along with #7, is most controversial. Similar to prior proposal but includes cost recovery encouragement. Much utility investment was made pursuant to obligation to provide service to public and regulatory compact dictates that utilities be given reasonable opportunity to recover investments and expenditures no longer used and useful. When prices are higher than those in market, regulation has failed and regulatory compact is inoperative. Customers shouldering burden shouldn't further indemnify investors. Proposes alternative language recognizing these thoughts, and requiring IPPs along with utilities to mitigate costs.

### PULP

1. Objects to threat that if utilities don't "cooperate" they will be denied reasonable opportunity to recover, and that respect for IPP expects is tied to cooperation. Potential for Commission to tie any party's request for relief to cooperation puts Commission's credibility with public at risk. Also, definition of "cooperation" is unclear.
2. Further, guaranteeing utilities opportunity to recover all sunk costs is same as requiring captive customers to pay costs of historic inefficiencies. Should require competitors to shoulder part of sunk costs to encourage ONLY economic bypass. Part of high cost problem is utilities' own doing.
3. Moreover, advent of competition creates new opportunities. Commission should weigh equitable considerations before authorizing recovery of excessive costs. Finally, part of obligation to minimize costs may include contractual breach with payment of damages. Whether existing contracts should be binding is

independent of whether there is competition. This issue is one of how a utility can and should minimize costs.

#### SSHEER

Should reject entirely; costs are antithesis of market pricing and unduly burden end-users. If some version needed, should be expanded to say that any substantial negative impact on any stakeholder shall be taken into account before any change is made.

#### Staff

Does not support first sentence, citing Abrams case, and Section 72 of Public Service Law; Commission need not provide utilities with up-front assurances (of an opportunity to recover past investments) to avoid delay in this proceeding; similarly, staff does not support second sentence; would replace first two sentences with "The Commission should give due regard to the financial interests of utilities, independent power producers and all other stakeholders;" supports third and fourth sentences.

#### Suffolk

Transition measures may be desirable to protect legitimate, prudently incurred costs. Period should be short and measures well-defined.

#### Utility Workers

Commission appears to be holding ability of utilities to recover expenditures hostage to extent they cooperate. This is a questionable approach, and raises many questions about what it means. There is no consideration of public interest as a factor to be addressed, which is required by present law in determining recovery for costs.

#### WEPCO

Intends to address this point strongly. Expects to narrow definition of investments made pursuant to legal obligations. There are no current utility investors needing special protection of Commission.

9. **Pro-competitive policies should further economic development (defined as "activities tending to enlarge the average disposable personal income of New Yorkers") in New York State.**

ACE

Economic development and an improvement in personal income will be natural consequence of efficiencies that will result from moving to competition.

AG

Endorses objective of increasing New Yorkers' disposable income.

American Forest

Best way to promote economic development is to keep rates low for businesses. However, there is tension between economic growth and low residential rates particularly in short-run. Transition costs would be shared by all parties including remaining customers and shareholders. It is reasonable to ask residential ratepayers to pay amounts to offset historic subsidies. If dump costs on customers leaving the system, would be obstacle to competition. Commission must not implement disincentives to self-generation. Major issue: proper valuation of transition costs (should be only generation costs). Need to distinguish between economic and uneconomic assets (excess nuclear investment). Should be amortization period for recovery of transition investment.

American Wind

States a reason for moving toward greater competition, rather than a principle, also focuses on a goal that is too narrowly defined.

CAP

Agrees with statement but doesn't appear to guide future decisions (rather seems to be a hoped-for result).

Cogen

Too limiting. While economic development should be furthered by deregulation, definition isn't correct. Economic development may be encouraging industries to stay

in NY because that provides economic strength. Increased competition may allow New Yorkers to hold on to what they have, not necessarily enrich them further.

Columbia

Agrees with principle. Firmly believes competition will have beneficial effect on economic development.

CPB

Supports principle.

DED

Definition of economic development provides little guidance. Should go back to definition included in prior version.

Joint Supporters

Definition of economic development should be broader. Interests of any customer which is a significant electricity consumer should be protected.

May

Supports principle.

MI

Disagrees with definition of economic development. Should instead focus on "creation of employment opportunities, establishment or expansion of businesses, investment in the expansion or modernization of business facilities and actions that improve the competitiveness of businesses," citing Economic Development Law §100, subd.4.

Nassau/Suffolk

Endorses without reservation.

PULP

No objection.

SSHEER

Should include in definition of economic development activities that maintain or improve living conditions; high



housing costs are detrimental to healthy business climate; continued viability of affordable housing has important economic development implications.

Staff

Acceptable with one change: delete definition of economic development as not being accurate.

Utility Workers

Doesn't disagree with goal of increasing economic development, but if principle is conclusion, then this is unfounded at this time. Could be re-worded to be expressed as a goal of considering pro-competitive policies, using same definition.

WEPCO

Considers this principle the "most important."