

WORK SESSION DOCUMENT
Revised with 3.23.18 Meeting Edits & Additions
GOVERNOR'S COMMITTEE ON ENERGY CHOICE
Technical Working Group on Consumer Protection

Summary of Policy Recommendations to be Presented for Consideration by the
Governor's Committee on Energy Choice

The Technical Working Group on Consumer Protection has been tasked with addressing the following issues related to the Energy Choice Ballot Initiative ("Question 3" or "ECI") and consumer protection considerations. This list is illustrative rather than exhaustive:

Licensing, market behavior, transactional rules and related enforcement regimes
Customer education on the marketplace and rights of customers
Full disclosure of essential terms of service by retail providers
Customer complaint and dispute resolution
Oversight and regulatory structure governing customer enrollment and switching
Low-income customer assistance

Pursuant to [Executive Order 2017-03](#) and [Executive Order 2017-10](#), and in accordance with the directive given at the November 7, 2017 meeting of the Governor's Committee on Energy Choice, during which Chairman Mark Hutchison instructed Committee Technical Working Groups to prepare summaries and policy recommendations for consideration by the full Committee, the Technical Working Group on Consumer Protection hereby reports the following summary and recommendations.

1. Successful Implementation of the Energy Choice Initiative Will Depend on Effective and Comprehensive Efforts to Educate and Inform Customers, Particularly Residential and Small Business Customers.

STATEMENT OF THE ISSUE: Educating consumers regarding the changes that are necessary under a restructured energy market is one essential component of the effort to implement effective consumer protection policies should the ECI be approved by Nevada's voters in November. In particular, residential customers and small businesses are especially in need of educational and informational resources that will assist them in adapting to the changes that will accompany a restructured energy market. The U.S. Agency for International Development (USAID) Office of Energy, Environment, and Technology, in assessing consumer protection issues relative to restructuring energy markets, has emphasized the unique needs of residential and small business consumers: "Those *consumers most in need of protection are the small commercial, agricultural, and household/residential customers*. Because of their general level of sophistication and their relative economic circumstances, these customers need a consumer-friendly forum for addressing their questions..."¹ (See USAID's *Best Practices Guide* at 65). The report continues, "Perhaps the *most effective means of consumer protection is that of public education.*" (*Best Practices Guide* at 66).

¹*Best Practices Guide: Implementing Power Sector Reform* (U.S. Agency for International Development (USAID) Office of Energy, Environment, and Technology, accessed March 19, 2018) Available at: http://pdf.usaid.gov/pdf_docs/Pnacq956.pdf

Jackie Roberts, West Virginia Consumer Advocate, stated during her presentation to the Consumer Protection Working Group on August 23, 2017: “Consumer education (not advertising) is essential for customer understanding of the changes [under a restructured market].” ([Roberts Presentation at 5](#)). In most states that have implemented energy market restructuring, large commercial customers and industrial customers have switched generation suppliers more readily than residential customers, who are more likely to remain with their current provider or select some form of default service provider. “As in most restructured states, the great majority of industrial and large commercial customers will switch to alternative retail generation suppliers, while the majority of residential customers will most likely remain with or return to some type of default service.” ([Roberts presentation at 10](#)). Research supports the general consensus that large industrial consumers are both more likely² to switch providers under a restructured market, and indeed, benefit more³ from a restructured market, at least initially, than are residential and small business customers. Additional testimony to this Technical Working Group concluded that “Customer education is critical to Energy Choice.” ([BCP presentation at 44](#)). *Consumer education efforts, therefore, should ensure that residential and small business customers have the information and tools they need to benefit from a restructured market in the same ways that larger commercial customers may benefit.* According to the U.S. Department of Energy’s Office of Energy Efficiency and Renewable Energy⁴, “Careful attention to timing, educational messages, information disclosure, and assurance of consumer protections will *accelerate the development of competitive retail markets for electricity and help ensure that lower prices, more choices, and better service are available to all customers.*” (See [A Blueprint for Consumer Protection at 17](#)).

SUMMARY OF PRESENTATIONS: The Technical Working Group (TWG) on Consumer Protection has met four times since formation. The following presentations relating to the importance of comprehensive customer education have been offered to the TWG on Consumer Protection:

- I. **August 23, 2017** - Jackie Roberts, West Virginia Consumer Advocate, offered a presentation entitled, “Electric Restructuring in Nevada: Protecting Customers.” Ms. Roberts discussed generally a broad review of consumer protection practices in restructured energy markets. Her presentation specifically identified the need to undertake customer education initiatives.
- II. During public comment on **August 23rd**, the National Energy Marketers Association offered its “[Consumer Bill of Rights](#)” for the record. The document’s stated purpose is to serve as a “foundation for doing business and as a common ground for public policy development,” and includes as item 9 a right to “Consumer education on energy, energy conservation, and technology available to help control energy costs.”
- III. **October 18, 2017**- Mark Kreuger, Consumer Counsel, and Judy Kareck, Senior Engineer, representing the Nevada Attorney General’s Office Bureau of Consumer Protection, presented on an array of topics, including consumer education. Regarding consumer education, their presentation stated, “Citizens will be affected by [restructuring]...customer

² “[Restructuring in Retrospect](#)”. Brown, Matthew H. [National Conference of State Legislatures, Oct. 2001](#) “A far larger portion of commercial and industrial customers have switched to alternative providers throughout the United States than have small commercial and residential customers...indicat[ing] that these customers were receiving enough savings by shopping for power to make it work their time and effort to make the switch.” At 25.

³ *Id.* “Residential customers and other small electricity users can expect some savings from restructuring, as some limited experience demonstrates. However the savings are likely to be small...Industrial customers on the other hand have switched providers much more quickly than have the smaller electricity users. Data suggests that the largest industrial customers – those with the greatest electricity usage – have the most to gain from choosing a new provider.” At viii.

⁴*Retail Electric Competition: A Blueprint for Consumer Protection* (Office of Energy Efficiency & Renewable Energy, U.S. Dept. of Energy, Oct., 1998) Available at:

<https://www.energy.gov/sites/prod/files/oeproductsandMedia/26116.pdf>

education includes rights and obligations...insufficient customer education can result in anger and confusion...consumers will need to be educated about the competitive market,” and that “robust consumer education” will include education related to costs.

RECOMMENDATIONS: Given that presenters to this Working Group overwhelmingly agree that customer education must be an integral component of ECI implementation, the Consumer Protection Technical Working Group recommends the following with regard to customer education policies:

- A. The Nevada Legislature, in collaboration with the Public Utilities Commission of Nevada (PUCN) and stakeholders, should amend the Consumer Bill of Rights to address issues related to Energy Choice, ensuring adequate protections exist to safeguard against the complaints and issues that have arisen in other restructured markets. In amending Nevada’s Consumer Bill of Rights, other similar statutes in restructured markets should serve as model legislation.
- B. Customer education initiatives should include explanations of the fundamental components of restructuring in multiple languages, to ensure that non-English speaking customers are equipped with the information and tools necessary to participate in a restructured market and are not penalized by the switch to a restructured market.
- C. Customer education initiatives should clearly explain potential impacts on prices, consumer protections, and low-income programs under a restructured market.
- D. Customer education initiatives should clearly explain customer risks, rights, and responsibilities.
- E. Customer education initiatives should leverage the ability of community organizations in developing messaging and executing education strategies for low-income, elderly, non-English speaking, rural, small business and other communities and constituencies who may require particularized educational assistance that is uniquely tailored to their needs.
- F. The Legislature should examine strategies to ensure that comprehensive customer education initiatives are appropriately funded.

2. In Order for Customers to Make Informed Choices in a Competitive Energy Market, they Must be able to Make Accurate Comparisons of Essential Terms of Service Among Various Providers.

STATEMENT OF THE ISSUE: In order for customers to make informed decisions when selecting energy service providers under a restructured market, customers must have access to fair, transparent, and accurate disclosures of essential terms of service, such as pricing, contract duration, environmental impacts, and other important terms of service. *Enforceable standards that will ensure providers are disclosing such terms of service will be critical in making sure customers are able to make “apple-to-apple” comparisons when choosing their electricity provider under a restructured market.* As the Bureau of Consumer Protection presented on October 18, 2017, transparency with regard to the contract information provided to customers is essential to “allow consumers to compare costs, contracts, variable rates, etc.”

SUMMARY OF PRESENTATIONS: The following presentations addressed the importance of fair and accurate disclosure of essential terms of service in a restructured market:

- I. During public comment at the **August 23rd** Working Group meeting, the National Energy Marketers Association offered its “Consumer Bill of Rights” for the record. The document includes as items 2 and 3, the right to “Accurate price and usage information, from both the utility and competitive energy supplier, that is expressed in simple and

straightforward terms,” and the right to “Terms and conditions written in plain language that set forth contractual obligations for both the consumer and energy supplier.”

- II. **October 18, 2017**-Mark Kreuger, Consumer Counsel, and Judy Kareck, Senior Engineer, representing the Nevada Attorney General’s Office Bureau of Consumer Protection, presented on an array of topics related to consumer protection issues, including the need for customers in a restructured market to be able to make accurate comparisons among potential service providers. The BCP highlighted the messaging adopted by the Public Utilities Commission of Ohio (PUCO) which emphasizes disclosure in customer selection of providers: “With the PUCO’s innovative tool, the differences between supplier plans, costs, and contract terms are always right in front of you.” (See [BCP Presentation at 50](#)).
- III. **February 8, 2018** - Bill Malcolm, Senior Legislative Representative, and John Erlingheuser, representing AARP, presented to the TWG on a variety of topics relating to energy choice and consumer protection. In slides 14-16 of their presentation, AARP addressed the importance of fully disclosing information to customers to enable them to compare services in a competitive marketplace. (See [AARP Presentation at 14, 15, 16](#)).

RECOMMENDATIONS: Based upon the information provided to the working group, the following recommendations are proposed for consideration by the Committee:

- A. The Legislature and/or the Public Utilities Commission of Nevada should consider adopting a model Terms of Service Disclosure Form which all retail energy providers must use in order to participate in the restructured market.
- B. The model Terms of Service Disclosure Form should require standardized methods of disclosure of essential terms such as price, contract length, additional fees, dispute, complaint, and collections processes, and the like.

3. A Competitive Energy Marketplace Must Ensure the Protection of Confidential Customer Data and Maintain Respect for Customer Privacy.

STATEMENT OF THE ISSUE: Implementation of the ECI will implicate new issues related to protecting customer data, respecting customer privacy, and maintaining confidentiality of records. Such information is particularly valuable in a competitive marketplace in which service providers must attract customers in order to participate in the market and account for marketing to customers as a cost of doing business. Given that studies indicate the costs of marketing to residential customers are generally higher than the costs of marketing to non-residential customers, the value of customer data and personal information is all the more clear.⁵ *There must be adequate protections for customers to ensure that their reasonable expectation of privacy and confidentiality is protected, and to prohibit the abuse or misuse of private customer data.*

⁵ See [Restructuring in Retrospect. Brown, Matthew H. National Conference of State Legislatures, Oct. 2001](#) “...indications are that the cost of securing individual residential customers is high...since most individual residential customers do not use a great deal of electricity, the returns on the [marketing] investment in securing each customer are small.” At 16.

According to the U.S. Department of Energy’s Office of Energy Efficiency and Renewable Energy⁶, “States must strike a balance between the need for fair dealings in the use and access to customer information to enable development of a competitive market and customers’ reasonable expectation that personal billing and payment information will remain private.” The importance of protecting customer privacy was emphasized by the Nevada Attorney General’s Office Bureau of Consumer Protection in its presentation on October 18, 2017, which included a slide dedicated to discussing the need for “oversight of and rules for managing data privacy and data exchange.” (*See BCP Presentation at slide 58-59*). There is consensus, then, that data protection and customer privacy are important components of protecting energy consumers in a competitive energy market.

SUMMARY OF PRESENTATIONS: The following presentations addressed issues related to protecting customer data, maintaining confidentiality of records, and respecting customer privacy:

- I. **August 23, 2017** - Jackie Roberts, West Virginia Consumer Advocate: “Electric Restructuring in Nevada: Protecting Customers.” Ms. Roberts discussed generally a broad review of consumer protection practices in restructured energy markets. Her presentation specifically identified the importance of customer privacy: “Privacy: The balance between customer privacy and facilitating retail choice will have to be struck in a manner that adheres to constitutional principles, protects customer safety and identity, and is accepted by those whose private data is being released.” (*See Roberts Presentation at 20*).
- II. **October 18, 2017**-Mark Kreuger, Consumer Counsel, and Judy Kareck, Senior Engineer, representing the Nevada Attorney General’s Office Bureau of Consumer Protection, presented on an array of topics related to consumer protection issues, including securing customer data and maintaining confidentiality of records. The BCP raised questions related to the extent to which providers may be authorized to transfer customer data to a competitor, the possibility of imposing penalties for misuse of customer data or failure to maintain confidentiality, and the nature of obligations providers may owe to their customers if and when they switch to a competing provider (*See BCP Presentation at 59*).

RECOMMENDATION:

- A. The Legislature should examine NRS 603A to identify any provisions which may need to be amended to ensure that security of personal customer information is maintained in a restructured competitive energy marketplace.

4. Successful Implementation of the Energy Choice Initiative May Require Amendments to Nevada’s Deceptive Trade Practices Act that Respond to and Reflect Changes Attendant to a Competitive Energy Marketplace.

STATEMENT OF THE ISSUE: Nevada, along with many other states, has adopted a statute that mirrors federal law prohibiting “unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.”⁷ Nevada has enacted both an unfair trade practices act (*NRS 598A*) and a separate deceptive trade practices act (*NRS 598*). Nevada’s deceptive trade practices statute addresses a

⁶*Retail Electric Competition: A Blueprint for Consumer Protection* (Office of Energy Efficiency & Renewable Energy, U.S. Dept. of Energy, Oct., 1998) p. 33-34 Available at:

<https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/26116.pdf>

⁷ See generally [15 U.S.C.A. § 45\(a\)\(1\)](#) and [NRS 598.0903-9694](#)

wide range of topics, including pyramid schemes ([NRS 598.100](#)), door-to-door sales ([NRS 598.140](#)), grant-writing services ([NRS 598.535](#)) and telecommunication services ([NRS 598.968](#)). One common practice addressed in Nevada's deceptive trade practices statute, is the practice known as "slamming," whereby a customer's service provider changes without the customer's permission (See [NRS 598.969](#)). "Slamming" was prevalent in the telecommunications sector after it was restructured, and is potentially a concern for a restructured energy market. According to the Attorney General's Office Bureau of Consumer Protection, so-called "Slamming" is among the commonly-reported complaints by customers in restructured markets, along with "billing issues, unexpected or hidden fees, inadequate or false information, high-pressure sales tactics, telemarketing," and others. (See [BCP Presentation at 40-41](#)). "Slamming" is one example illustrating that *some practices specific to retail energy providers in a competitive market, similar to telecommunications service providers, may potentially need to be addressed in Nevada's deceptive trade practices statute.*

SUMMARY OF PRESENTATIONS: The following presentation specifically addressed issues related to prevention of unfair or deceptive trade practices in a restructured energy market:

- I. **October 18, 2017-** Mark Kreuger, Consumer Counsel, and Judy Kareck, Senior Engineer, representing the Nevada Attorney General's Office Bureau of Consumer Protection, presented on an array of topics related to consumer protection issues, highlighting common customer complaints in restructured markets and the need for effective monitoring and oversight of market participants ([See BCP Presentation 39-41](#))

RECOMMENDATIONS:

- A. The Legislature, in collaboration with the PUCN and stakeholders, should follow the example of other states and require a notification of "switching" from retail providers to customers, as a way to identify and stop "slamming" and "cramming" practices. Customers may not be aware their provider was switched if no notification is provided.
- B. Third-party retail marketers should be prohibited, as in other states that have had problems with such entities adequately informing or misleading customers, which contributed to the "slamming/cramming" problem, particularly where compensation for third-party marketers is based on "sign-ups." Third-party marketers can also make it difficult to deal with complaints/problems as they are not the actual provider, meaning that liability and remedies issues can become more complicated. Third-party marketers may also "disappear", rendering regulatory oversight of unfair behavior difficult.
- C. Nevada should consider prohibiting door-to-door sales and/or telephone solicitation as these are often used by third-party marketers, leading to problems related to misleading or misinforming customers as well as high-pressure sales tactics, "slamming/cramming" and the like.
- D. The Legislature should examine NRS 598 to identify any provisions of the State's Unfair and Deceptive Trade Practices Act which may need to be amended to ensure that retail market participants do not engage in unfair or deceptive trade practices, and that adequate penalties are in effect for participants who do engage in such practices.

5. Successful Implementation of the Energy Choice Initiative Should Ensure that Excessive Costs do not Prohibit Customers from Exercising the Right to Choose a Retail Provider.

The right to choose an energy provider under a restructured energy marketplace "is not an end unto itself." (See *Roberts Presentation*) That is, customers' ability to participate in a competitive

retail energy market must be coupled with the ability to choose service providers that offer reliable service at reasonable prices. Customers must be able to evaluate and choose providers based upon the value of the service offered. Accordingly, steps should be taken to discourage excessive costs or costs that effectively prohibit a customer from fully exercising the right to choose a provider based upon the value of the service offered. In light of the potential for stranded asset costs and other costs associated with transitioning from Nevada's current system to a competitive market, these considerations related to excessive costs are all the more pressing.

SUMMARY OF PRESENTATIONS: The following presentation specifically addressed issues related to excessive costs faced by customers in restructured energy markets:

- I. **August 23, 2017** - Jackie Roberts, West Virginia Consumer Advocate: "Electric Restructuring in Nevada: Protecting Customers." Ms. Roberts discussed generally a broad review of consumer protection practices in restructured energy markets. Her presentation specifically identified the importance of rate caps: "A Few Core Design Principles: ***Start with rate caps to mitigate stranded cost impacts***....retail shopping is not an end in itself but one means to the end of ***reliable service at reasonable prices***." ([See Roberts Presentation at 20](#)).

RECOMMENDATIONS:

- A. Variable rate contracts should be prohibited as they create enormous confusion for customers and can easily lead to problematic contracts for customers who end up paying more⁸.
- B. The Nevada Legislature, in collaboration with the PUCN and stakeholders, should consider capping fees, especially related to enrollment, and prohibit disenrollment fees. Residential ratepayers may end up paying excessive fees for lower rate contracts in the hopes such contracts may save them money. Disenrollment fees have been used in other states as a means of preventing customers from switching to lower-cost providers or their preferred choice.

⁸ See generally *Are Consumers Benefitting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts* (Office of the Massachusetts Attorney General, March 2018) : "Many of the customers who experienced savings during the two-year study periods may not save long-term. Some consumers pay less than electric company rates for some of the time but these lower rates may be 'teaser' rates, meaning that they may start low and then increase in subsequent months." At 22.