competitive electricity suppliers. If a small consumer of electricity has a dispute, the amount in controversy is likely to be too small to make it sensible to pursue the matter in small claims court. Some administrative recourse is needed. Also, small claims courts do not typically have the power to prevent disconnection or contract termination while the dispute is pending, whereas commissions typically do have this authority.

It would be possible to put the dispute resolution function in another agency, such as the attorney general, or to limit its scope to mediation, as the Massachusetts statute suggests. However, the commission is likely to be the most familiar with the types of issues raised by the dispute, and the integration of the dispute resolution function in the same agency that has licensure powers is likely to produce a more accommodating response from the suppliers.

The model statute explicitly empowers the commission to order restitution. Many state commissions today lack this power, which leaves consumers with incomplete remedy. However, there are, in theory, other ways to take care of a customer’s need for a forum for seeking redress.

The statute also empowers the commission to commence civil enforcement actions that could lead to monetary penalties, cease and desist orders, or license suspension or revocation. In addition, the commission may refer a case to the attorney general for further enforcement actions.

The model statute contains a private right of action, permitting consumers to seek redress in court for harms by suppliers. The model statute empowers the commission (here, with the agreement of the sister agency with primary jurisdiction over consumer protection statutes) to designate certain practices as unfair and deceptive acts and practices. The consequence of this designation is that a violation would expose the supplier to the risk of paying treble damages and attorneys fees, in many states.

Sec. XXX-11. Privacy and Unwanted Solicitations

In many states, individuals are concerned about protecting the privacy of information about themselves. Load research is so sophisticated today that a marketer, armed with a customer’s name, address (including zip code), telephone number, and a pro-
file of the amount and timing of electricity use, can infer a great
deal of detail about the lifestyle of the household, including the
types of appliances.

For their part, marketers complain that if they cannot get inform-
ration on individual customers, they cannot identify the prof-
itable accounts, and it will be difficult to market to any but the
largest customers (who tend to know their own load profiles, or
have ready access to this information). They prefer access to the
same information the utility has on a customer, or at most a nega-
tive check-off, whereby customers are given a limited window of
opportunity to indicate, in writing, that they do not want identify-
ing customer information disclosed to marketers.

This model statute opts for the most protection for privacy—no
information is to be released unless the customer affirmatively
asks for it to be released, in writing. The model statute also pro-
vides that the commission shall make aggregate load data avail-
able on a class-by-class basis (as it is today under regulated verti-
cally integrated monopolies).

Note that the statute later calls for utilities to divest themselves
of their power plants, and would limit the percentage of electricity
sales in the distribution utility’s service area that any affiliate of the
distribution utility could handle. These provide strong protections
for the marketers from unfair methods of competition by utilities,
based on information not available to others. If divestiture and
limited service-area marketing are not achieved in your state’s
statute, it might be sensible to revisit the question of information
flow, to make it easier for competitors to have the opportunity to
market effectively. In such a case, it would be useful to create a
mechanism to determine the market value of the information
being released, and to make sure this market value is paid and
flowed back to customers in the form of lower distribution rates.

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*Marketers also point out that utilities have all this information, and where
utilities or their affiliates are permitted to continue to sell power at retail, the util-
ities have an unfair marketing advantage.

*Conceivably privacy could be even more tightly protected by requiring such
a written release every time a different marketer seeks customer load and other
information.
One final caution concerning individual load data. One of the likely impacts of retail competition is that more and more distinctions will be made between customers, in terms of the types of service and the pricing arrangements offered to them. This “market segmentation” is a natural outcome of retail competition. Marketers will likely gravitate first to the high users, not only between classes (e.g., industrial before commercial, commercial before residential), but to the high users within a class. The cost of marketing to the customer and gaining their business can then be spread over a larger volume of sales. The result will be that some customers will not get the good deals or the first opportunity to exercise retail electricity choice. Disclosing customer-specific load data will hasten this market segmentation, for good and for ill.

**Sec. XXX-12. Unauthorized Switching, Unauthorized Charges Prohibited; Penalties**

Slamming and cramming are two of the most frequent problems cited by telephone consumers. Slamming refers to arranging for a customers’ competitive supplier to be switched without the customer’s knowing and meaningful agreement. Cramming refers to the practice of adding services to a customer’s account (such as call-waiting, home security, internet access, and the like) that the customer never ordered.

Crammers and slammers rely on the fact that many customers do not closely examine their bills, and may be confused by the bills. To the extent the problem is confusion, the commission has authority and should exercise it to prevent a confusing bill format. To the extent fraudulent switching or service adding is going on, the statute provides for stiff penalties.

The model statute requires that fees, other than the price of electricity itself, be cost-based. This is a limitation on the amount of money a firm can charge for such fees as late fees, restoration-of-
service fees, bounced-check fees, and the like. Limiting the firm's ability to set fees at "what the market will bear" is a departure from the general rule of the statute that all prices are deregulated. However, in other industries that have been deregulated, there is a growing tendency to tack on a series of fees, each small in and of itself, that effectively augments for most consumers the price that is advertised. It is important that these add-ons not be an occasion for gouging the unsuspecting consumer.

Cramming and slamming are so reviled by consumers, generally, that it should not be difficult to obtain agreement to strong protections in the restructuring statute.

Sec. XXX-13. Disclosure, Billing Information, and Labeling

In focus groups across the country, electricity customers uniformly state that they want to be able to compare two or more electricity suppliers' offers on an apples-to-apples basis. They want simple, straightforward, and accurate information that will enable them to compare options. This information is crucial if a truly competitive market is to be created. It is also essential if consumers are to be able to navigate the confusing waters of competitive offerings.

Apples-to-Apples Price Information

The model statute requires competitive electricity suppliers to provide the commission with information it needs to publish "price data, information on price variability, and customer service information, in such a format as to permit reasonable comparisons between price and service offerings of competitive electricity providers."

A key component of these comparisons is the average bill for typical customer types. Under Section XXX-13, the commission decides what the typical customer usage is, and the companies must disclose what their bills would be, given the prevailing distribution rates and the supplier's price. The statute requires the suppliers to provide this fundamental information to its customers in a variety of formats, each of them clear and understandable.

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3 The limitation on fees for switching to and from standard-offer or low-income discount service are similar restrictions.
**Misleading Information Prohibited**

Section XXX-13 protects consumers against misleading advertising. Not only must suppliers follow applicable state and federal laws, they are subject to specific restructuring statute requirements designed to prevent customer confusion. In particular, suppliers cannot leave customers with the impression that their charges represent the total charges a customer will face. They must also notify customers of all of their terms and conditions in writing at the time they initiate service. The suppliers must provide a booklet with such information when service is initiated, and annually after that. Suppliers must notify their customers of the availability of low-income discount rates and standard-offer rates. The commission is empowered to further specify advertising and disclosure requirements.

The statute provides that the commission must gather information consumers will want to know on a variety of aspects of the suppliers' activities, and supply it to the public on a quarterly basis. The commission is empowered to require suppliers to provide cost information to permit it to publish a complete picture of the supplier's price and pollution situation:

1. rates and charges;
2. applicable terms and conditions;
3. the percentage of each provider's total electric output derived from several categories of energy sources listed in the subsection and others specified by the commission;
4. the rates at which the suppliers' facilities emit a number of pollutants;
5. a record of customer complaints and the outcome of each complaint; and
6. any other information the commission determines will assist customers in making informed decisions when choosing a competitive electric provider.

In addition to the information gathered and published to help customers make choices in the marketplace, the commission is charged with developing a comparison of prices and services across the state. To help it prepare this analysis, distribution utilities must gather price information from the various suppliers that operate in their service area and file it with the commission.
Finally, to give consumers a basis for understanding the various components of their bills, the statute requires that electric utilities unbundle their bills. The unbundled bills will show the charges for the regulated monopoly components of the bill (e.g., transmission and distribution) separately from the competitive aspects of the service (electric supply). The statute requires the commission to conduct a contested hearing to decide how to split the rates between the different functions of the utility system, and the different classes of customers. This is important because some customers could be paying for costs caused by other customers, and these subsidies should not be frozen into the unbundled rates.

Sec. XXX-14. Divestiture of Generation

The model statute requires that utilities sell their generating plants, as well as the output of any plants they have not sold. The purpose of this requirement is to prevent the same company from owning the monopoly grid and also owning generation plants that will compete with other suppliers' plants for sales of power.

The model statute exempts PURPA contracts,²² energy-efficiency contracts, and nuclear plants from the divestiture requirement, as well as generation required only to maintain the stability of the transmission or distribution system.²³ The PURPA contracts and demand-side management were likely undertaken at the direction of the commission. Regarding nuclear plants, it is unlikely that such plants can be sold except perhaps at a loss.²⁴

The commission is required to set up rules for the sale to maximize the value received for the sale. The consumers will have to share the cost of any shortfall from the failure to maximize the sale value.²⁵ One of the advantages of requiring utilities to share in the

²²The federal Public Utility Regulatory Policy Act of 1978 (PURPA) required all major utilities to buy power from small power producers and cogenerators.

²³If a load center is far from most of the generation capacity, it can put a strain on the grid, and putting some generation capacity near the load center can relieve some of this burden.

²⁴Appendix II provides an alternative method for calculating what the utilities should recover to make themselves whole for uneconomic costs stranded as a result of the introduction of competition. In this alternative, utilities must either divest nuclear plants or transfer them to an affiliate and forfeit stranded cost recovery for them.

²⁵See Section XXX-19 and Appendix II.
cost of uneconomic plants is that this provides the utility an incentive to maximize the value of the sale. Such an incentive is likely to be more effective than any rules of how to handle the sale that the commission can develop.

Sec. XXX-15. Default Service

All restructuring plans have some provision for default service, and the model statute is no exception. Situations in which default supply may be required include (a) termination of a supply contract for any reason, at least until a new supply contract is initiated, (b) moving to a new area without any idea which supplier to choose; and (c) a miscommunication with a supplier, resulting in the customer not realizing that no supplier has been designated. Most importantly, default service is the back-up if competition fails to reach all or part of the residential market.

Because of the way that the electric system functions, the restructuring plan must provide for customers to continue to receive supply if there is some problem with them continuing to receive power from a particular supplier. Electricity flows whenever we are connected to the power grid and we turn on a light or an appliance. If a customer has problems with one supplier, either another supplier must be lined up or the customer must be removed from the grid (physically disconnected). A default supplier is the entity responsible for providing power to a customer without a competitive supplier until the customer can line up another supplier.26

The model statute provides that the commission can use a bid process to select the supplier that will have responsibility for the load of default customers. A competitive electricity supplier may

26This responsibility will be identified in two ways: before the fact and after the fact. Before the customer uses power, if the customer is identified as a default customer, the default supplier will be obliged to provide sufficient power to the grid to serve that customer. Periodically, at the wholesale level, all the suppliers will enter into a process (perhaps under the auspices of the Independent System Operator) to identify whose customers were taking what load at each given period of measurement (e.g., every quarter hour). The default supplier will be assigned the responsibility of the loads of all default customers not covered by supplies brought to the table specifically by the default supplier, and will also have the responsibility (and the right to bill for) supplies to individual customers who were only identified as default customers through the after-the-fact review of which suppliers were honoring their agreements.
also be chosen by the commission. Note that, unlike some restructuring statutes, this model does not say that the incumbent electric utility will automatically be the default supplier. As in the case of the standard-offer service, Section XXX-5, the model recognizes that the right to serve a large, “pre-aggregated” group of customers is valuable. This right should not be given away. If a provider is designated in the statute, some form of compensation to customers should be provided as well.

Some settlements (e.g., the early Massachusetts Electric Company deal) provided that default customers would get served by the system as a whole and pay spot market prices. This alternative exposes default customers (who could be a large number of customers, and will over time tend to have a higher concentration of payment-troubled customers) to the extreme volatility of the spot markets. In the summer of 1998, for example, wholesale spot market prices for electricity rose at some points to as high as $7.50 per kilowatt-hour (the national average is 6 cents per kWh). Because of this wild volatility in spot prices, it is better to designate a particular supplier.

Recall that Section XXX-6 provides for a limit on the spread between default prices and system average prices, and Section XXX-15 itself caps default prices at the market price in the region.

Other than the winner of a bid, the incumbent utility is the most obvious candidate to provide default service. In lieu of a bid process, it may be desirable to trade this designation in the statute for some other relief that is sought from the incumbent utility in the statute (such as the amount of net present value stranded cost recovery).

Sec. XXX-16. Marketing: Large Utilities

Sec. XXX-17. Marketing: Small Utilities

Section XXX-16 represents a cornerstone of the model statute’s efforts to create a truly competitive market in addition to mere deregulation of energy pricing. This section, based on the provisions of the Maine restructuring statute, severely limits the extent to which an affiliate of a monopoly distribution utility can market power within the service area of that distribution utility.
Section XXX-16 only applies to so-called "large utilities." Two factors suggest that these restrictions apply only to companies with a major share of sales in the state. First, only such large companies could, practically speaking, leverage their control of the bottleneck distribution network to favor their own sales of power to end-users. The second consideration is that the costs of policing the limitation on market share are too high in the case of small utilities, relative to the benefit for the consumer of the greater chance of getting true competition.

Section XXX-16 prohibits the distribution utility from marketing power directly in its own service area. It must set up a separate corporate affiliate, subject to rules of conduct set out in the statute, if it wants to keep making sales of power. This competitive service provider affiliate may sell power to customers outside the transmission or distribution area. However, within the area of its transmission and distribution affiliate, the affiliated competitive service provider may sell only 33 percent of the energy sold in that area. In other words, it is limited to one third of the market within the area where its affiliate owns the bottleneck distribution grid.\(^2\)

To prevent the utility from abusing even its limited market share within the area of the transmission and distribution affiliate, the statute provides for standards of conduct governing relationships between the competitive supply affiliate and the monopoly transmission and distribution affiliate. The standards included in the model statute are similar to those in statutes and in commission rulings under restructuring. A couple of provisions bear special mention. The model statute requires not only the monopoly utility, but the competitive affiliate, to make their books and records available on reasonable terms to the commission. The commission is empowered to order an audit of these books, at the utility's expense.

In addition to the limitation on marketing within an area by the transmission and distribution company's affiliate, Section XXX-16 limits the overall market share in the state by any one supplier. The

\(^2\)Note that the competitive service provider may provide service to a greater part of the market if no bidder comes forward and proposes to sell standard-offer service for prices that meet the cap set out in Section XXX-6. In such a case, the competitive service provider can function as the standard-offer supplier, at the standard-offer price cap.

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limit proposed in the model statute is 15 percent of the sales in the state. To prevent anyone from getting an unfair advantage for competitive sales by buying control of a distribution utility, the statute bars a purchaser of 10 percent or more of the monopoly firm's stock from selling power at retail in the state, and empowers the commission to order divestiture of even such a limited share if it finds that the control gives the competitive supplier an unfair advantage in the market. After such a divestiture, the transmission and distribution utility may be barred from affiliation with a competitive electricity supplier.

The commission is charged with doing an analysis of the need for such a market share limitation and reporting its findings to the legislature. The model statute suggests that this analysis take place five or six years after competition is introduced. By that time, the market may have settled down some, and the outline of its ongoing shape may be apparent.

In the case of small utilities, no specific limitation is provided on sales within the distribution service territory, or on corporate structure of the small utility. Nor are detailed provisions of a code of conduct set out in the statute. Rather, the statute provides that the commission will provide for a "small utility" code of conduct by way of rulemaking. The commission may, by rule, determine the level of structural or behavioral separation appropriate for the supply and distribution arms of the small utility.

The most important aspect of the large utility section is that it embodies a structural solution to the issue of cross-subsidization and undue market power. Many utilities today argue that no legal separation is needed between its monopoly and competitive arms, and even if a separate affiliate is required, there should be no limitation on that affiliate's right to do business in the competitive market for sales within the affiliated distribution service territory. The model statute endorses a structural solution for several reasons. It is the cleanest solution—there can be no question about the incentives driving management of either company if they are (a) separated and (b) do not do business in the same service area. To this extent, the model statute actually compromises the strict separation of functions that competitive market purists would prefer.

Another reason for relying on structural solutions is to get the incentives right, rather than hoping to police behavior in the face
of powerful incentives to abuse the market position of the parties. It is expensive and intrusive to scour accounting books and cross-question employees. It also has not proven to be easy to demonstrate just how market power and cross-subsidization are occurring (even where the resulting prices to consumers and lack of options suggest it is occurring). Thus, policing behavior is both expensive and, relative to structural solutions, ineffective.

Sec. XXX-18. Marketing: Consumer-owned Utilities

Under the model statute, consumer-owned utilities:

(1) may sell retail generation service only within their respective service territories; and

(2) may not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service.

Various consumer-owned utilities, such as co-operative utilities, have asked for different treatment in the restructuring debates. It seems to be a general rule that no co-op can sell power at retail within another firm's service area unless it is willing to open its own distribution network to retail competition. This is the so-called "reciprocity" principle.\(^2\) This statute goes further in restricting co-ops, by limiting their sales to within their distribution territory.\(^3\) It does not, however, prevent marketers from coming in to the co-op's territory and making retail sales there. Either a reciprocity provision or this Maine limitation are workable solutions, depending on your state.

Sec. XXX-19. Stranded Cost Recovery

Stranded cost recovery is one of the most contentious and important issues in electric industry restructuring. High prices in

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\(^2\) A similar concept of reciprocity has been debated in states where competition is being opened up, but the neighboring states have not opened their grids up to retail competition. Experts have differed about whether in principle reciprocity must be demanded before a neighboring state's power companies can come into the restructuring state to sell power, but in practice, reciprocity has been the rule.

\(^3\) It is possible that the Maine Legislature chose this cautious and conservative route because a co-op in Maine went bankrupt over nuclear power investments in the 1980s. A state with less sense of caution about the business practices of its cooperatives might welcome their foray into competition.
states moving to competition have typically been caused by utility investments in generation plants, or contracts for the output of such plants, whose costs are higher than the cost of replacing that power in the open market today.\(^6\) Aside from reducing rates to eliminate overearning and other contributors to high prices, the only way to reduce costs is to reduce stranded costs.

The statute defines stranded costs as the costs of generation-related assets that are uneconomic relative to what could be obtained in the market, and that were rendered uneconomic because of the move to competition:

(1) the costs of a utility’s regulatory assets related to generation;

(2) the difference between net plant investment associated with a utility’s generation assets and the market value of the generation assets; and

(3) the difference between future contract payments and the market value of a utility’s purchased power contracts.

The statute provides for a cut-off date for claiming that the move to competition stranded an investment. After the date chosen in the statute, it should have been understood that competition was a good possibility, and the utility should be responsible for new investments. The statute provides exceptions to this rule, to permit the utility to recover costs that were deferred for later collection by order of the commission (e.g., so-called “regulatory assets”), costs to renegotiate purchased power contracts, energy conservation costs, and costs beyond the control of the utility.\(^3\)

The model bill requires a utility to attempt to reduce its stranded costs. The utility may, for example, try to bargain down the purchase price for power under contract from independent power producers. The statute encourages such mitigation by linking a utility’s


\(^3\) This provision bears watching, so that this exception is not interpreted to swallow up the entire rule. A stronger version of the pro-consumer model would delete this provision.
level of stranded cost recovery to such efforts. The commission must approve measures taken to reduce stranded costs.

It is hard to reduce stranded costs directly. Most of what goes by the name “mitigation of stranded costs” turns out to be cost-shifting or cost-sharing, rather than cost-reduction. Utilities can run their plants more efficiently. They can renegotiate contracts with independent power producers to push for lower prices on these purchases. In a few cases, it can be proven that management was imprudent in obtaining these generation assets, and reduce the amount payable by customers. But most so-called “mitigation” involves requiring shareholders to absorb some of the cost of these plants, shifting costs from one group of customers to another, or shifting costs from one generation of customers to a later generation.

The model statute does not use the word mitigation in such a broad way. Instead, it uses mitigation narrowly, and instead of that term substitutes the categories: “[s]tems to reduce costs, mitigate near-term rate impacts, or minimize the net present value cost to be recovered from customers.” Some such steps are mandatory under the statute, and some are voluntary. Mandatory cost and rate-impact reduction steps include good faith efforts to negotiate the renegotiation of independent power producer contracts and purchased power contracts, maximization of market revenues from existing generation assets, and efforts to maximize current and future operating efficiency. The costs of consultants to help perform these tasks can also be recovered as a mitigation step.

Voluntary steps to reduce costs, mitigate near-term rate impacts, or minimize the net present value cost to be recovered from customers, may include reallocation of depreciation reserves for generation assets to existing generation assets (so long as net costs are not shifted between customer classes as a result), reduction of book assets by applying the net proceeds of any sale of existing assets (again so long as net costs are not shifted between

\[\text{The model statute includes a specific prohibition on using mitigation investments as a means to finance the restarting of a nuclear plant that is closed at the time the statute is passed. This prohibition is based on the experience of legislatures in states with a heavy nuclear plant investment.}\]
customer classes as a result of such application), voluntary write-offs of above-market generation assets, the decision to retire uneconomical generation assets, and efforts to divest generating sites at market prices reflective of best use of sites.\(^3\)

The statute requires that the commission determine the level of stranded costs in a contested hearing and provides for the commission to revisit its calculation at least every three years, and make another estimate, based on the situation as it has changed in the interim. This version of the statute calls for these recalculation to be prospective only, with no "true-up" to correct for over- or underestimation in the calculation performed three years earlier.\(^4\)

Once the level of stranded costs is determined, it must be decided who should pay for them. The model statute insists that shareholders absorb a fair share of the uneconomic costs of the current system. The statute allows the utility to get a return of its investments in the assets, but not a return on its investments. That is, it can recover its costs, but no profit is allowed. The recovery period cannot exceed 10 years.\(^5\) The commission is to set a charge for all customers to pay, that will enable the utility to recover the stranded costs allowed under this section. The statute requires the commission to see that stranded costs are allocated to customer classes in the same way they would have been allocated if the restructuring had never happened.

The model statute has two plans for funds to further protect customers. One, the "Ratepayer Equity Plan," is like the Chrysler bail-out. In the Ratepayer Equity Plan, the utility gives ratepayers the right to buy stock (warrants) in the future at today's prices, up to the value of stranded costs given to the utility by the customers.

\(^3\) Some believe that the sites where power plants now sit are among the utility's most valuable assets. Given the shrinking number of suitable sites for developing power plants, ratepayers have a great interest in capturing the value of such sites, and not simply handing them over to utility stockholders.

\(^4\) For more discussion of the pros and cons of a one-time, recurring but prospective, or recurring and reconcilable estimation of stranded costs, see Tellus Institute's stranded costs paper, noted above.

\(^5\) Note that if the recovery period were the full 10 years, the utility would recover about half of the present value of its investments, because it would not receive from ratepayers the time value of the money it paid for the assets.
This preferred alternative has the utility getting help today to withstand the transition to the market place, and in exchange giving ratepayers a share of its future success.36

The second, called here the Ratepayer Parity Trust Fund, lowers stranded costs by diverting to ratepayers the taxes received by the state from the sale of utility generation assets. These taxes would otherwise go to pay for government responsibilities, or be returned to taxpayers, but under the Ratepayer Parity Trust they would be returned directly to customers. The model version of this fund requires legislative appropriation for the use of the funds, and requires utilities to provide warrants to the extent of the use of the funds.

The model statute does not include any language on securitization. Securitization is a process whereby the utility can issue bonds to raise money for near-term rate reductions, backed by a state-enforced pledge that ratepayers will payoff the bonds. Some utilities are anxious to have this pledge of ratepayer funding, and the certainty it brings. This certainty may also help to lower the interest rate required to raise money from the bonds. Using bonds to fund stranded costs tends to lower the cost by substituting debt for equity.37

Against all these reasons, consumer advocates point out that securitization shifts all the risks of stranded costs to the consumer. If the economy turns sour, or if the plant is poorly managed or is prematurely retired, ratepayers still have to pay for the bonds. If there were no securitization, it is not so clear that ratepayers would have to keep paying for such costs. If it makes sense to include a securitization provision in the statute, make sure that an attorney who is knowledgeable about bond issuances has looked it over for one of the consumer representatives in the negotiations.

36The warrants represent a potential for some dilution of the company’s stock. Of course, if the future does not go well for the utility, and its stock does not rise in price, the warrants will not be redeemed, and they will not impact the utility’s bottom line. Thus, the customers only share the utility’s good fortune, if there is good fortune to share.

37Debt costs can be deducted from taxes, whereas equity recoveries are taxable. Debt rates are usually lower than profit rates.
Sec. XXX-20. Rate Design

Section XXX-20 reaffirms the authority of the commission to set rates for the monopoly transmission and distribution company. The Maine statute, on which this section was based, includes a requirement that commissioners must allow distribution utilities to recover nuclear plant decommissioning costs to the extent required by law. This language appears unnecessary, and for that reason unclear, so it has been deleted from the model statute. The deleted language also did not resolve the question of which part of the rate should bear these generation-related costs.

Section XXX-20 requires the commission to hold a contested hearing to set rates for the monopoly utility shortly after passage of the statute.

Section XXX-20 also provides that the commission will establish a system benefits charge. The system benefits charge, sometimes called a wires charge, is used to pay for benefits to be provided by the electric industry under a restructured system. These benefits include energy-efficiency investments, renewable power development, and low-income bill affordability assistance.

Under Section XXX-20, the costs of such public benefits are recovered by a charge on all retail sales. The charge is to be uniform for all sales to customers within a class. This is a compromise between the pro-small-consumer position that all customers should pay the same rate per kilowatt-hour, and the pro-big-customer position that only residential customers should pay for such system benefits. To mitigate the effect of this rate design, the statute provides that the "cap the gap" limit on price differentials between small and large customers cannot be violated by the allocation of system benefits costs. Another important feature of the Section XXX-20 treatment of stranded costs is that such charges cannot be isolated on the bill, but must be rolled into distribution rates along with other ordinary costs of the distribution company's business.

Sec. XXX-21. Renewable Resources

Section XXX-21 presents the first of three public benefits for which the statute provides support. Renewable resources are electricity power sources that will not be exhausted through use. Often these resources are chosen for support because they do not pro-
duce as many polluting emissions as other more traditional sources of power. These resources are often in a preliminary stage of development and would not be chosen to power electricity if only market forces were used to make such choices.

There are two primary ways policy makers encourage the development of such resources. One is to require power marketers to include a certain amount of such renewable power in their portfolio of power sources. Another is to raise funds to support research and development, or to help renewable power providers to sell their output at market costs (such as by subsidizing customers’ purchase of above-market renewable power).

The model statute provides a placeholder for both of these methods of supporting renewable power. Volunteers are encouraged to consult with environmental groups in their states to get information on which to base a decision about what types of support to put in a restructuring statute.

Sec. XXX22. Energy Efficiency

Energy efficiency is another benefit of the current vertically-integrated monopoly utility system in many states that would be threatened by a move to completely market-based electricity sales. All customers have a stake in making the use of electricity as efficient as possible. The model statute requires distribution utilities to provide energy-efficiency programs to its customers.

The model statute sets out a specific schedule of kilowatt-hour charges to raise the funds to pay for these efficiency programs. Based on the Massachusetts restructuring model, the statute calls for a gradual reduction from 3.3 tenths of a cent per kilowatt-hour to 2.5 tenths of a cent per kilowatt-hour. The commission will have the authority to increase the rate up to the cap of 3.3 tenths of a cent per kilowatt-hour after the fifth year.38

The statute requires that programs funded under this section be cost-effective, and cost-efficiently use ratepayer dollars. The commission is required to promulgate specific rules for the administration of the programs soon after passage of the statute. Note that

38To put this in perspective, in high-rate states, residential customers pay from 9 to 15 cents per kilowatt-hour. Three-and-a-third tenths of a cent is about 2 to 4 percent of the utility’s current rates.
this model statute does not provide for statewide administration of energy-efficiency programs. While there are many reasons why such programs should be administered on a statewide basis, there are also potential drawbacks.39

The model statute makes an explicit commitment to energy efficiency for low-income customers. Section XXX-22 provides for a fund from a minimum charge of 0.25 tenths of a cent or 20 percent of the overall energy-efficiency funding, whichever is greater, for energy efficiency targeted to low-income customers. The statute directs that such electric-efficiency programs be coordinated with gas conservation programs run by natural gas firms in the state.

Sec. XXX-23. Consumer Education

Almost every state that has passed restructuring legislation has recognized the importance of giving consumers a basis for exercising their rights in the new market structure. The model statute does not try to define exactly how that should be done. It adopts the concept of a consumer education advisory board to assist the commission in developing these specifics. Sufficient funding is needed, as well. In addition to looking to consumers as a source of money, it might be possible to require competitive providers to contribute to the fund.

Sec. XXX-24. Needs-based, Affordable Rates for Low-income Customers

Section XXX-24 is a primary vehicle to carry out the purpose of the legislature that essential electricity services be affordable for all residential consumers, regardless of income. Section XXX-24 lays out this principle again, making it clear that the issue is not simply affordable access, but affordable service.40

39 For more information on statewide administration, see Nancy Brockway, Statewide Administration of Utility Low-Income, Energy-Efficiency Programs, NCLC 1998. Note that since that paper was written, California’s Legislature has passed A.B. 2841, providing for central fund administration of a number of public benefits programs, including energy-efficiency programs, using boards appointed by the commission to assist in program oversight.

40 In some drafts of universal service language, particularly in the telephone industry context, principles are written so that only “access” is promised. Access is not a term of art, so it can mean different things to different people. However, access often is interpreted to mean the physical availability of the service, and not also its financial availability to the customer. For this reason, the word “access”
The model defines affordability in straightforward terms:

For the purposes of this chapter, a bill is affordable if the burden it places on the household is no greater than two times the burden, expressed as a percentage of income, that is borne by the average residential customer of median income.

Thus, the statute uses a "burden-based" method to evaluate whether the cost of electricity to the household is affordable by that household. The model statute scales the cost as a percentage of income, recognizing that the same price can represent widely different burdens on a household's income, depending on the level of that income. For example, in Pennsylvania, median income families paid 2.5 to 5 percent of their income for electricity, depending on whether they used electricity for heating in the winter. By contrast, low-income customers paid between 5 and 40 percent of their income for essential electricity, depending not only on whether they were electric space heat customers, but more importantly on the depth of their poverty. The lower the income, the greater a bite electricity costs takes out of it.

The statute would not require a distribution utility to implement a Percentage of Income Payment Program, although such a burden-based program would be the most direct and effective way to bring bills to the affordable level. Rather, the statute is performance-based. The legislation requires that the program be evaluated by determining whether bills of low-income customers have been reduced to the target level. Funding is to be provided at a level designed to accomplish this result.

should not be used, or if it is used, other language is essential to clarify that the guarantee goes beyond merely having poles and wires running along the house, and extends to low-income households being able to pay for their electricity and its delivery to them.

a Under a PIPP, a low-income household pays monthly an amount equal to the percentage of its income determined to be affordable. Variants include Percentage of Bill Programs and Tiered Discounts. For a description of the various burden-based programs, and other ways to reduce bills to affordable levels, see Energy and the Poor: The Crisis Continues, NCLC, 1997.

b Research has demonstrated that the minimum level of income needed to maintain a healthful, basic standard of living ranges between 150 percent and 200 percent of the federal poverty level in areas of moderate to high costs.

AARP Model State Legislation on Electric Utility Restructuring: Bill Summary and Handbook 49

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The statute requires that energy efficiency, as prescribed under Section XXX-22, be the first line of defense for low-income customers against unaffordable bills. But the statute likewise recognizes that energy-efficiency measures will take time to install in customers' homes, and will not lower bills for many low-income customers for a number of years (as the efficiency programs are rolled out and implemented). Also, even after the maximum levels of efficiency are achieved, there will remain low-income customers whose income is too low to afford electricity. Thus, while efficiency can provide a long-term benefit to reduce the need for bill assistance, direct bill assistance will need to be provided as well.

The funds for the bill reduction are to come from the distribution utility, and be raised by distribution rates set in ordinary rate cases. The bill authorizes utilities to propose additional forms and levels of assistance to their low-income customers.

The statute provides that bill affordability assistance is not to be counted as income in any means-tested program, to the extent that is within the power of the state. So far, federal welfare programs have not counted bill discounts and reductions as income, and such reductions have not been taxed federally.

In an effort to overcome the stigma and poor credit rating of low-income customers, so that competitive marketers will make efforts to sell power to them, the statute provides that the distribution utility serve as a backstop for the excess debt low-income customers may have related to their energy purchases.

Eligibility for the affordability assistance will be open to low-income customers who have qualified in the preceding 12 months for any means-tested public benefit. The model statute does not require that the customer be presently receiving assistance, as there are a number of households with seasonal income that apply for means-tested welfare only during periods of unemployment, and others who apply only to programs like LIHEAP (Low-Income Home Energy Assistance Program) that are available only at certain times of the year.

The statute also enumerates a number of specific means-tested programs, including but not limited to Transitional Assistance for Needy Families, Supplemental Security Income, food stamps, Medicaid, general assistance, means-tested Veteran's Benefits, and Low-Income Home Energy Assistance, recipients of which are eli-
gible for bill assistance. Finally, the assistance is open to recipients of any other means-tested program for which eligibility does not exceed 175 percent of the federal poverty level, and to those whose annualized household income does not exceed 175 percent of the federal poverty level.

Finally, the model bill specifies the outreach efforts that must be made by program administrators. The utility must engage in substantial outreach efforts, and must report annually to the commission on these efforts and their results. One of the outreach methods must be "automatic enrollment." Under automatic enrollment, computer tapes listing customers are matched with computer lists of recipients of the means-tested benefits that qualify a customer for bill assistance. If a match is found, the customer is automatically given bill assistance. If a household receives means-tested assistance but has no electricity account, the customer is notified of its right to apply for electric service, and obtain the bill assistance to help afford it. The statute requires state agencies administering such programs to cooperate in making automatic enrollment work.

Sec. XXX-25. Commission Participation in Federal and International Proceedings

Section XXX-25 provides explicit authority for the commission to participate in federal and international proceedings that might affect the state's interests. In addition, the section authorizes the commission to monitor developments in the industry, and make whatever reports would be useful to advancing policy in the electric industry.

Sec. XXX-26. Transition; Utility Employees

Section XXX-26 is an example of ways that a restructuring statute can ease the transition to a competitive marketplace for employees of regulated monopoly utilities.

Sec. XXX-27. Reports

The model statute does not assume that we can merely provide the legal right to sell power to competitive suppliers, and all the benefits of competition will flow to customers. Rather, it requires policy implementers to monitor the industry, and report annually on the extent to which the purposes of the statute are being
achieved. In addition, the commission must suggest ways to correct problems that it identifies.

Sec. XXX-28. Intervenor Compensation

Section XXX-28 provides for funding to community groups and others that wish to present their case to the commission in the formal proceedings required by law, but do not have the resources to hire attorneys or expert witnesses. Some states already have intervenor compensation funds, whether at the initiative of the state or in an effort to comply with the Public Utility Regulatory Policy Act of 1978. Where your state does not have a well-functioning intervenor funding mechanism that will provide consumer groups the resources they need to have a voice in the implementation of electric industry restructuring, Section XXX-28 provides a model that can be used.

Today, if a case falls under the specific limits of PURPA, utilities must provide the funds for the intervenors. Utilities are typically the source tapped for funding of interventions in non-PURPA situations. One example is where a consumer group persuades the commission to order a utility to return a large over-recovery to customers, and the intervention leading to that order is paid out of the funds to be returned to customers.

Section XXX-28 proposes to use fines collected by the commission in the way of penalties incurred by utilities or competitive electricity providers under Sections XXX-10 and XXX-12 (consumer protection sections) to make up the core of funding for Section XXX-28 intervention support. The commission is authorized to direct the utilities to contribute further, and any interest on moneys in the fund are returned to the fund to support intervention under Section XXX-28.

Section XXX-28 determines who can apply for funding, whether it matters if the applicant has other sources of funding, what to do if there is a publicly funded intervenor, what to do if more than one party advances the arguments raised by the applicant, and similar practical issues in administering intervenor

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*For more information about existing intervenor funding arrangements, see Nancy Brockway, *Intervenor Funding in Public Utility Rate Cases*, NCLC, 1996.*
funding plans. One key aspect of these arrangements is that the commission is directed to process requests for funding long enough before hearings in a case so that the applicant has some chance of finding out whether it will get funding, before it has to do the work of preparing a filing for which it has no funds.

**Sec. 3. Conforming Amendments**

**Sec. 4. [Repeal Contrary Existing Statutes]**

The model statute includes a section based on the Maine statute that reaffirms certain contracts made by utilities under regulation, including contracts to provide conservation services and contracts that fulfill the Public Utility Regulatory Policy Act requirement to buy power from cogenerators and small power non-fossil-fuel generators.

The model statute contains two boilerplate sections typical in a major revision of law, such as the restructuring statute. One requires the commission to identify all the places in the current compilation of statutes that are inconsistent with the new statutory scheme and propose conforming amendments to bring them into sync with the new structure. The second technical amendment repeals any existing statute that is inconsistent with the new structure.

**APPENDIX I: Retail Marketing Area Language**

Advocates in Ohio have proposed the “retail marketing area” or RMA as a way to jump start the market, while maintaining stability and security for small customers. Under the retail marketing area concept, the distribution service area is divided up into smaller areas, and a bid process is used to choose a standard-offer electricity service provider for the transition period.

The use of a bid process applies competitive pressures to the purchase of electricity for standard-offer customers in these retail marketing areas. It also introduces new names and company identities to the public. While only one such firm in any given RMA will be known as a competitive electricity supplier during the transition period, customers will be exposed to the concept of receiving delivery services from the distribution utility while receiving sup-
ply services from the RMA electricity supplier. In addition, several firms winning the bids across the state will have their names and identities introduced to the public, and have an opportunity to establish a track record of prices and service quality to build on and cite if and when retail competition is introduced.

Customer choice is preserved by providing for an opt-out. Any customer that does not want to be served by the RMA bid winner may choose a different competitive supplier. The proposed language spells out the opportunities to opt out. The statute also expressly deals with the question of whether customers who opt out can be charged an administrative fee for switching services.

To select the geographic retail marketing areas, the distribution companies would file proposed plans for commission consideration, meeting the following criteria:

- feasible size;
- a diverse mix of customers, including low-income customers, based on customer class, socioeconomic, geographic, and load characteristics;
- each RMA reasonably comparable in customer mix to all other RMAs;
- boundaries do not result in a transmission or distribution service bottleneck to the advantage of a particular provider of electric generation service;*
- and
- contiguous geographically and contiguous in terms of transmission and distribution services.

The sample RMA language in Appendix I exempts co-ops and municipal electric utilities from the requirement of being split into RMAs. This draft also permits municipal utilities to participate and divide their territory into RMAs.

The statute spells out some of the criteria for selecting winning bidders, including the obligation to serve new RMA customers. Price factors include the rate reduction objective specified in the

*It may not be possible to avoid such bottlenecks, in which case some way to adjust for the economic impact of the bottleneck may be necessary.
statute for standard-offer service. Non-price factors may include service reliability, customer service quality, assurance of supply, performance guarantees, financial viability, and any other factors the commission considers necessary to run a fair bid process and select a supplier that can meet consumer needs.

Finally, the RMA language provides that the electric distribution utility will supply power to retail marketing areas in those circumstances where the bid process has not produced a competitive electricity supplier for the RMA.

**APPENDIX II: Alternative Stranded Cost Recovery Section**

Appendix II contains an alternative method for determining stranded costs. It shares many features with Section XXX-19, the stranded cost recovery section of the model statute. But it provides some different approaches that may be considered when writing your state’s statute.

First, the alternative in Appendix II does not only encourage divestiture of generation assets, it requires divestiture of non-nuclear plants and contracts, and requires that utilities make an attempt to divest nuclear assets, if they wish to claim stranded cost recovery. The alternative stranded cost section also goes into some detail about how the divestiture plans should be developed and implemented.

In the case of nuclear assets, the alternative provides a minimum bid price that must be received, or the sale need not go forward. The minimum bid price is the present value of the future cash flow the plant could be expected to bring in over its remaining useful life, assuming efficient management. Also, the Appendix II definition of stranded costs expressly bars recovery of decommissioning costs.

Another aspect of the version of stranded cost recovery contained in Appendix II is that the periodic recalculations of stranded costs (in the case of non-divested plants) include not only a

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*Drawn from the Connecticut restructuring statute.

Section XXX-19 as it appears in the model statute is silent on decommissioning issues, which have tended to be controversial.
prospective re-estimate, but a true-up of past estimates against actual experience.

APPENDIX III: State UDAP Citations

You can access most states' current regulations via the Internet at "www.state.[state's two-letter abbreviation].us."
The model language presented here does not cover every issue that is likely to arise in your state's discussion of retail electricity competition. For example, the impact of introducing retail competition on the state's tax revenues will definitely be of concern to the legislature, and will be part of the mix when the statute is being developed. Also, the model does not lay out any options for securitization, but ultimately you may decide that it is preferable to negotiate a securitization provision in return for some provisions not otherwise achievable.

The model statute does not take up the question of siting of power plants, whereas many states have revised their siting standards and proceedings in light of restructuring. The model statute does not address performance-based ratemaking, although there

\* Some states have gross receipts taxes on utilities, and if revenues go down as some functions are divvied up by the market among other firms, gross receipts taxes on utilities can go down if current language defining the application of such taxes is not brought up to date.
are some important issues that consumer advocates should be alert
to before agreeing to such alternative ratemaking schemes.

Electric industry restructuring is a massive task, and it is impos-
sible to anticipate all the specific issues that will come up in each
state. The model statute provides a template on the key issues of
concern to the small consumer. It tries to take a strong pro-con-
sumer position. How your own state handles these issues will in
part be up to you. It is the hope of the authors that this model will
provide some examples that will be useful as you wind your way
through the legislative process in your state.
Electric Billing and Metering Services

Many would-be competitive electricity suppliers are seeking the right to sell and install meters, read meters, and perform billing and collection services, not just for themselves but for all suppliers (including the distribution utilities).

If competition is introduced in metering, it is likely that competitive suppliers will want to retire existing meters and install fancier meters with more ability to record and store data. It is likely that these meters will be installed first among the higher users, even within the residential class. As a result, opening metering to competition will promote market segmentation. Too often, when markets are divided into subsegments, the small users are the ones that get the worst service at the higher prices. On the other hand, competition in meters may lead to innovations that eventually benefit all consumers.
In the case of billing, most states are permitting the distribution utility and the competitive electricity supplier to bill separately. The disputes have arisen when the competitive supplier wants to bill not only for its supply of electricity but for the distribution utility's distribution service as well. Most states have indicated that at some point they will permit such bundling by the supplier (at the customer's option), but at the same time, states are not requiring the utility to use the suppliers' billing services.

The model statute does not require utilities to give up control over billing and metering. This issue has been very contentious around the country. Competitive marketers complain that they will be unable to succeed if they can only compete for customers' purchases of electric energy. They insist that they must be able to offer competitive metering and billing services.

Sometimes they argue that they can bring down the costs of these utility functions by bringing the discipline of the market to providing such services. Sometimes they argue that without new meters that record usage at different times of day ("real-time" or "time-of-use" meters), customers will not have the right "price signals," or that customers will not be able to take service at rates that vary during the day with the suppliers' costs (which would make it economic for some customers to curtail their use during high-demand, high-cost hours, and switch their usage to lower-demand, lower-cost periods). Other times they argue that they must be able to meter and bill competitively in order to offer customers the convenience of receiving one bill for several services, such as electric, gas, telephone, alarm service, Internet access, and cable TV.

Most advocates for small consumers look at these claims with some skepticism. Consumer advocates may remember that Great

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4That is, they will pay the same rate every hour of the day, whereas the supplier's costs will go up and down as demand goes up and down, with a spread of anywhere from 15 to 50 times between the lowest cost and the highest in one day, at the extreme.

5A report by Tellus Institute and Wisconsin Conservation Corporation, How Do We Get There from Here, prepared in 1996 for a group of California consumer advocates, concluded that among residential customers, only the very high users would likely be able to benefit from the availability of such real-time pricing options.
Britain experienced a great deal of confusion when it tried to open up its metering market to competition before there was an infrastructure capable of supplying the new market. Accuracy of meters and confidence in meter reading are other values that consumer advocates have raised. And to the extent existing meters are subject to being changed out, the question arises, Who must pay for the remaining costs of the existing meters—the utility that is left with a meter that is barely worth the cost of removing it, the customer who has agreed to purchase new metering services, or the competitor who has persuaded the customer to switch meters?