Chapter 5

"Any other information the board believes to be beneficial to the Governor, the Legislature, and Nebraska's citizens when considering whether retail electric competition would be beneficial, such as, but not limited to, an update on deregulation activities in other states and an update on federal deregulation legislation."

1.0 Purpose

Provide information on deregulation activities in other states, an update on federal deregulation legislation, and other public policy developments relating to electric deregulation.

2.0 Team Members

Kurt Stradley	–	Lincoln Electric System (LES)
Tim Grove	–	Omaha Public Power District (OPPD)
Jay Holmquist	–	Nebraska Rural Electric Association (NREA)
John McClure	–	Nebraska Public Power District (NPPD)
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3.0 Introduction and Deregulation Overview

Approximately 1/3 of the states have some form of retail electric competition, but in many cases, the incumbent local utility is providing the service. No state has enacted retail choice legislation since 2000 and several states have scaled back or repealed retail choice initiatives. State retail electric markets have gained considerable attention in the last year due to significant increases in retail electricity prices. Escalating and volatile fuel prices are a key driver, but do not fully explain all the cost increases. Many state retail choice programs are either struggling or inactive. As noted in a previous report, on September 1, 2004, the State Corporation Commission of Virginia issued a press release describing the findings of its fourth annual report on retail choice in Virginia. The press release notes "that the electricity supply industry continues to struggle following price run-ups, disclosures of accounting and dated improprieties, creditworthiness issues and volatile fuel prices, particularly natural gas." The press release concludes "that Virginia is not the exception when it comes to the lack of competitive activity for electricity supply service. In other states with retail choice, energy markets are generally inactive with few customers able to purchase power at a price lower than their traditional utility company."

On September 1, 2005, the State Corporation Commission of Virginia issued its fifth annual report stating that "retail competition" in Virginia has not lead to lower prices than would have been charged under traditional regulation. The executive summary ends with the following assessment of retail choice:

"It appears that, from the data so far, most retail customers (especially residential) in restructured states where the transition period has ended and the price is now based on the wholesale market, are seeing prices increase faster than in the non-restructured states or states still in transition with a price cap. At best, at this point in time, no discernable overall benefit to retail consumers can be seen from restructuring."

The September 2006 Virginia report confirms the findings of previous reports.

Several states are facing significant challenges under retail choice as rate caps are removed under retail restructuring programs. Earlier this year, 72% retail rate increases were proposed in Maryland as retail price caps were ending. In Illinois, another state with retail rate caps, a 30% rate increase was proposed for January 1, 2007, but has been modified to a 10% increase for each of the next four years.

4.0 Texas

Because of the national significance of the public policy choices adopted in Texas, the material below contains background on the Texas retail electric program and the status of the program efforts.

Legislation was enacted in 1999 to begin the process. Under the new law, the Texas PUC began the process of certifying competitive retail electric providers. On June 1, 2000 a pilot retail competition program commenced and on January 1, 2002 full retail choice began for all customers at which time retail rates were reduced by 6%.

Following are the key provisions of the Texas law:

- Froze electric rates for investor-owned electric utilities in Texas through 2001.
- Prohibits large utilities from lowering their rates for residential and small commercial customers before 2005, or until 40 percent of their customers are served by competitors.
- Exempts electric cooperatives and city-owned electric companies from customer choice unless their governing boards decide to open their markets to competition.
- Allows customers the choice of using renewable energy (wind and solar power for example).
- Requires older electric generators to meet current environmental rules by 2003 or be shut down.
- Creates a fund to pay for lower rates for low-income families in low-income families in low-income assistance programs.
- Prohibits disconnection of service for nonpayment during periods of extreme weather.
- Allow customers to receive one bill for their electric service in an easy-to-read format and understandable language.
- Creates a Do Not Call list for customers who do not wish to be called by telemarketers on behalf of electric providers.
- Provides customer protection against discrimination, against being billed for unauthorized charges (cramming), against unauthorized change of service provider (slamming) and other unfair, misleading and deceptive practices.

It is important to note that much of the Texas region is operated as a separate electrical interconnection. This limits and confines the size of the restructured area and restricts the impact of wholesale energy deliveries from potentially lower cost resources. When Texas initiated the retail choice program, the impacted region was operating with significant generation in reserve and significant new Independent Power Producer (IPP) projects underway. In addition, average retail rates are relatively high, in the 9¢/kWh range, compared to other regions of the U.S. With high reserves, new generation coming on line and high retail rates, Texas becomes somewhat of a special case. With excess generation capacity, numerous new, highly efficient, independent generation projects and a high underlying retail electric rate level, the Texas region provided a prime opportunity to initiate retail choice. This is not to discount what has been accomplished by the Texas electrical industry. It is, however, a confirmation that for retail choice to be successful, the appropriate preconditions need to be in place.

Under the Texas deregulation program, electric utilities were divided into three areas: retail, power generation and transmission and distribution. Any investor-owned utility (IOU) that wishes to enter the retail market must create an affiliate company. To ensure deregulation, the Texas Public Utilities Commission created a price-to-beat for investor-owned affiliates that will remain in place until 2005 or until 40% of customers switch to another retail company. In September of 2004 the price-to-beat in the five distribution areas ranged from 10.9 to 13.0¢/kWh with the average residential at 11.7¢. Price-to-beat rates have increased significantly since January 2002. For 2006, the residential price to beat jumped dramatically and was over 18¢/kWh for one IOU and over 19¢/kWh for another.

The Texas Public Utility Commission monitors and reports on the status of retail choice in Texas. By 2006, more than 60% of the state's total electric load is being served by alternative suppliers.

Under state law, the PUC reports to the Texas Legislature every two years on the status of the electric markets. The next report is due in January 2007. There have been other reports praising the economic benefits of the retail markets in Texas, yet there have also been numerous media reports of consumer frustration over increasing retail electric rates.

Below is a comparison of average retail electric revenue per kWh in Nebraska, which has not adopted retail choice and three states that have choice. Retail rate caps have been in place in Texas and Illinois.

	Nebraska	**Texas**	**Illinois**	**Pennsylvania**
1996	**5.32¢**	**6.16¢**	**7.69¢**	**7.96¢**
1997	**5.30¢**	**6.17¢**	**7.71¢**	**7.99¢**
1998	**5.30¢**	**6.07¢**	**7.46¢**	**7.86¢**
1999	**5.31¢**	**6.04¢**	**6.98¢**	**7.67¢**
2000	**5.31¢**	**6.49¢**	**6.94¢**	**7.65¢**
2001	**5.39¢**	**7.38¢**	**6.90¢**	**8.01¢**
2002	**5.55¢**	**6.62¢**	**6.97¢**	**8.01¢**
2003	**5.64¢**	**7.50¢**	**6.88¢**	**7.98¢**
2004	**5.70¢**	**7.95¢**	**6.80¢**	**8.00¢**
2005	**5.82¢**	**9.11¢**	**6.97¢**	**8.27¢**

Source: U.S. Energy Information Administration

5.0 Pennsylvania

An example of retail choice is reflected in the summary from Pennsylvania that shows three of seven investor-owned utilities have no customers choosing alternative supplies and another having only 95 commercial and industrial customers choosing an alternate supplier.

Number of Customers Served By An Alternative Supplier As Of 7/1/2006				
	Residential	Commercial	Industrial	Total
Allegheny Power	0	0	0	0
Duquesne Light	94,086	9,504	618	104,208
MetEd/Penelec	0	0	0	0
PECO Energy	6,528	32,326	7	38,861
Penn Power	0	0	0	0
PPL	0	87	8	95
UGI	0	0	0	0
Total	100,614	41,917	633	143,164

Pennsylvania Office of Consumer Advocate
7-10-2006

Percentage of Customers Served By An Alternative Supplier As Of 7/1/2006				
	Residential	Commercial	Industrial	Total
Allegheny Power	0	0	0	0
Duquesne Light	17.96	15.84	40.85	17.8
MetEd/Penelec	0	0	0	0
PECO Energy	0.5	21	0.2	2.5
Penn Power	0	0	0	0
PPL	0	0	0	0
UGI	0	0	0	0

Totals may differ due to rounding. Percentages are rounded to the nearest tenth of a percent.

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6.0 Conclusions

- Natural gas prices have been at all time highs, significantly increasing the cost of gas-fired generation and setting the market price in most wholesale and retail markets.
- Promises of wholesale or retail competition driving down energy prices have not occurred.
- Competitive wholesale markets are a necessary precedent to successfully implementing retail choice.
- Adequate power supply, reserves and infrastructure are crucial.
- Increased stability of fuel prices is needed for retail choice programs to function properly.
- Better customer response to wholesale price signals is needed.
- FERC is actively involved in developing and addressing the transition to a more competitive wholesale market.
- Customers served by regulated retail markets have generally experienced lower electric rate increases than customers served by “competitive” retail markets.