

February 4, 2009

The Honorable Harry Reid  
Majority Leader  
United States Senate  
S-221 Capitol Building  
Washington, DC 20510-7020

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510-1702

The Honorable Nancy Pelosi  
Speaker  
United States House of Representatives  
H-232 Capitol Building  
Washington, DC 20515-6501

The Honorable John A. Boehner  
Minority Leader  
United States House of Representatives  
1011 Longworth House Office Building  
Washington, D.C. 20515-3508

Re: Energy Provisions in the House and Senate Economic Stimulus Bills

Dear Majority Leader Reid, Speaker Pelosi, Minority Leader McConnell, Minority Leader Boehner:

The purpose of this letter is to point to several anti-consumer provisions of what overall is important and vital legislation designed to stimulate our economic recovery. Our concerns relate to Energy Efficiency and Smart Grid provisions of both the House and Senate versions of the American Recovery and Reinvestment Act of 2009. We strongly support significant increases in public and private investments in cost effective energy efficiency programs, as well as improvements and modernization of the distribution and transmission systems. However, embedded in these new spending programs are conditions for the receipt of federal funds that are likely to harm many residential customers, particularly those with lower than median usage and low-income, elderly, and medically vulnerable customers who depend on a basic level of electricity service for their health and safety.

We urge you to eliminate any provisions of the bill that would condition receipt of federal funds for efficiency and smart grid investments on adoption of specific policies for state consideration in the Public Utility Regulatory Policy Act of 1978 (PURPA) (15 U.S.C. 3203 et seq.) and in the Energy Independence and Security Act of 2007 (EISA) (42 U.S.C. 17151 et seq.).<sup>1</sup> Making release of critical federal funds contingent upon certification to the Secretary of the Department of Energy of actual implementation of rate design or retail investment decisions that have traditionally fallen under the

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<sup>1</sup> H.R.1, Title V, Electricity Delivery and Reliability (refers to title XIII of EISA 2007); H.R.1, Title VII, section 7006 (a)(1), Additional State Energy Grants (refers to Energy Policy and Conservation Act, title II, Part D), and SA.98, Title IV, Department of Energy, Energy Programs, Energy Efficiency and Renewable Energy (refers to PURPA 1978, section 11(d)(16) and (17), after renumbering).

jurisdiction of state regulatory agencies fundamentally alters the state/federal utility regulatory relationship.

### Smart Meters and Time-based Rates

EPACT 2005 amended PURPA to require that state regulators consider whether electric utility companies should offer customers time-based rates and install advanced meters capable of two-way communication between the customer and the utility while recording consumption on an hourly or more frequent basis. EISA also amended PURPA to require state regulators to consider adopting a requirement that investments in “nonadvanced grid technologies” should not be approved unless they pass certain “tests” compared to investments in “qualified smart grid systems.” EISA also added another PURPA standard to require states to consider a mandate that all electricity providers provide every consumer with information on time-based electricity prices in the wholesale market on a daily basis. To the best of our knowledge, no state has adopted these policies, at least in the form reflected in these federal standards. Furthermore, these standards appear to suggest that time-based rates and passing through volatile wholesale market prices to every residential customer is a “good” policy. *Many state and national consumer organizations oppose the notion that every residential customer would benefit from or should be encouraged to purchase their basic electricity service based on volatile and unpredictable wholesale market prices that reflect short-term price signals.*

The assumption behind these provisions is that customers can receive variable wholesale price signals and shift consumption to off-peak periods when prices at wholesale are relatively low. However, there is a lack of evidence to support the notion that low-income and low use electricity consumers -- who tend to own few non-essential appliances and relatively inefficient essential appliances-- are capable of shifting consumption patterns to take advantage of off-peak pricing. Under such circumstances, rather than benefitting, low-income and low-use elderly households could be penalized by volatile time-based rates, particularly because the costs of these new metering systems exceed the benefits in most cases. Likewise, customers who must use electrically powered medical equipment such as breathing machines lack the ability to alter energy use patterns. Finally, deployment of “smart meters” will allow the remote disconnection of service without a premise visit, which will result in a dramatic increase in the frequency of service disconnections, threatening the health and safety of vulnerable consumers.

We urge Congress not to confuse the investments in a modernized “grid” with the need to replace every residential customer’s meter and rely on volatile time-based pricing schemes to achieve effective demand response or reduction in peak load demand. We support cost-effective demand response programs, but it is not necessary that time-based pricing be relied upon to achieve effective demand response and peak load reduction programs. *We ask you to defer to state regulators and the public processes embedded in these proceedings to determine the most cost effective and beneficial means of assuring the long term lowest cost of electricity for residential customers.*

## Revenue Decoupling

The Energy Independence and Security Act of 2007 includes provisions that amend PURPA to require that state regulators consider a policy to align electric utility rates with incentives to assure investments in cost-effective energy efficiency. EISA also mandates that states *consider* removal of “the throughput disincentive and other regulatory and management disincentives to energy efficiency.” This appears to be a reference to revenue decoupling, a ratemaking concept involving breaking the link in traditional ratemaking between utility revenues and sales.

While there are many versions of “decoupling” that have been considered by, and in some cases, adopted by state regulators, consumer organizations have typically opposed such significant changes to retail rate policies, particularly when decoupling is shown to result in higher bills for residential customers who cannot or do not participate in offered efficiency programs.

*We ask Congress to defer to state regulators to determine how and in what form utilities should be protected from the adverse impacts of declining sales due to investments in efficiency programs.* Regulators have access to various tools to reward utilities for making cost-effective investments in energy efficiency.

In sum, consumer advocates respectfully urge that you reject proposed provisions to fundamentally alter the state/federal regulatory relationship established in PURPA, and that will promote state regulatory approval of metering and decoupling provisions that threaten the energy security of low-volume and low-income utility customers.

Respectfully,

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on behalf of our Low Income  
Clients

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