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Bringing Consumer Choice
to Electricity

By Representative Thomas DeLay



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Bringing Consumer Choice to Electricity

The Honorable Thomas DeLay

I appreciate this opportunity to be here today at The Heritage Foundation. The Heritage Foundation has consistently and courageously fought for what is right in America. It employs thinkers who probe beyond political correctness, who dare to challenge the status quo, who often turn Washington wisdom on its ear.

This reputation for intellectual integrity and intelligent problem solving makes Heritage the place where Members of the Congress turn when they want fresh ideas that will help move the United States in the right direction. And it is this reputation that brings me here today.

Today, I aim to take on some sacred cows. Today, in the best Heritage tradition, I want to turn Washington wisdom on its ear. Today, here at The Heritage Foundation, I want to unveil my proposal to give consumers the ability to restructure the electric utility industry.

We all know that the electric power industry is the last surviving monopoly in the United States. But the experiment in government-mandated monopoly production and pricing has ended; it has failed to measure up in each major industry in which it existed. The time has come to bring the electric generation business into the modern economic age, and that means bringing it into a competitive, open, free-market structure.

The free-market vision I have in mind for this currently regulated monopoly is based on the most important, time-tested principles in our economy: customer choice, innovation, and competition.

Bringing electricity into the competitive world will unleash new products, greater efficiencies, business synergies, and entrepreneurial success stories. It will create new industries, new entrepreneurs, and new jobs. And, if done correctly, it will lower the cost of electricity to all consumers. Anyone who thinks it won't happen needs to look at the evidence. Other industries that have undergone major competitive restructuring provide ample proof.

There is a significant history in those industries, including railroads, trucking—which is one in which I take a great deal of pride—airlines, natural gas, and telecommunications. As Jerry Ellig's recent research shows, in each of these industries, prices paid by customers fell at least 4 percent to 15 percent within the first two years. Within 10 years, prices were at least 25 percent lower and sometimes close to 50 percent lower.

Firms in these industries have reduced their costs, lowered prices, introduced new services, reconfigured old services to better accommodate consumer preferences, and deployed new technologies and practices. These positive outcomes offer greater benefits to all classes of consumers. The same will be true for electricity.

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Lower electricity costs will have profound effects across the entire economic spectrum because everybody uses electricity. Lower electric bills for the military, post office, and other major government entities will save taxpayers billions of dollars. American businesses, both large and small, will see one of their highest operating costs significantly reduced, instantly making them more competitive in international markets. Think about the impact for schools, hospitals, nursing homes, and supermarkets. In a competitive market they will pay less for their electricity because they will have the right to choose their electric service provider.

For example, according to the National School Board Association (NSBA), 74 percent of schools are housed in buildings more than 25 years old. Most of these buildings are equipped with antiquated heating and cooling systems. The NSBA estimates that individual schools could save as much as 35 percent on their electricity bills if they were given the opportunity to shop around for the best rates. With most schools paying tens of thousands of dollars a year for electricity, the savings to be realized are huge and could be used to pay for more teachers, better facilities, and new computers.

And if restructuring is done correctly, individual consumers could save up to a third or more on their monthly utility bills or several hundred dollars annually. That is equivalent to one of the largest tax cuts in U.S. history—and it is a large, progressive tax cut that benefits everyone.

What exactly is the right way? That is the question that a lot of people are asking. The right way—the only way—is to allow open and competitive markets to operate.

The free market separates winners from losers—something that makes a lot of people inside the Beltway very uncomfortable. One thing history has taught us: In a free market, consumers are winners and monopolies are losers. That is something I am more than comfortable with.

Another question attracting much attention is whether or not Congress should require the states to provide for customer choice. An entire cottage industry has sprung up around this issue, claiming that congressional action is unnecessary and intrusive. You will find no more committed opponent of federalism than myself, but this is a phony argument. In fact, the reverse is true. A case could be made that current utility franchises are an undue burden on interstate commerce.

The electric grid is an interconnected, interstate network that does not stop at the state line. Opening this interstate business to competition is unquestionably the job of the federal government. On this point, the Constitution and the Supreme Court are quite clear. The Constitution grants Congress the authority to regulate commerce among the states, and limits the power of states to discriminate against interstate commerce. On numerous occasions, the Supreme Court has upheld the right of Congress to act with respect to intrastate economic activity where it has concluded that the activity substantially affects interstate commerce.

In writing the majority opinion in *U.S. v. Lopez*, which overturned the Gun-Free School Zones Act, Chief Justice Rehnquist, cited what he called the watershed case on Commerce Clause jurisprudence: *NLRB v. Jones & Laughlin Steel*. Rehnquist wrote, “The Court held that intra-state activities that have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions are within Congress’ power to regulate.” Clearly, the electricity industry is such an activity.

To those conservatives who are using the specter of federalism to slow the drive to a competitive electricity market, I have a word of warning. Conservatives have always believed in free men and free markets, and the electricity industry is no different. Remember that intellectual honesty always triumphs over political expediency. Be careful not to tread on individual rights while carrying the banner of states' rights.

Because there is such a clear and compelling need for Congress to take action, I am re-introducing legislation today that will open the electricity market nationwide—with an absolute minimum of federal interference.

Very simply, my bill gives each person the right to purchase electricity from any electric service provider—period. This would immediately shift the balance of power away from the monopolies and to the individual, where it rightly belongs. But in order for that power of choice to produce competitive prices, a couple of other things must happen. Some existing barriers to competition need to be removed so that choices multiply. To ensure that all consumers have access to the electric service provider of their choice, my bill would open access to transmission and distribution systems.

And, to ensure that individual consumers as well as commercial consumers reap the benefits of competitively priced electricity, my bill would ban any exit fees or other levies on customers who freely and legally exercise their right to choose an electric service provider.

My bill provides a framework for an open and competitive national market. The states and consumers will determine the shape and character of the market.

Now, as most of you who know me and have worked with me in the past are aware, I like to tackle problems head on. That is why I am not shy about taking on the issue of so-called stranded costs. I believe it is important to debunk the myths surrounding the notion that utilities are somehow “owed” the costs of all of their investments, irrespective of whether those investments have proven to be economically prudent choices.

First, building and owning electric capacity does not create **stranded costs**; only owning capacity that costs more than the market price creates stranded costs. **Only** proven regulatory obligations that forced utilities to make uneconomic decisions have any merit as actually being stranded.

Second, there is no basis in law to support the existence of a “regulatory compact” that constitutes a binding and enforceable contract. Nor were utility franchises ever considered to be perpetually exclusive.

Consequently, I believe it is essential to protect families and small businesses from becoming the economic scapegoats for billions of dollars in questionable investment decisions. In order for smaller residential and commercial ratepayers to benefit, there must be an unburdened, open market. Stranded cost charges are anti-competitive and they reduce potential ratepayer savings on a dollar-for-dollar basis.

Some in the environmental community may be disappointed to see that I haven't included any proscriptive environmental provisions in my bill. But I believe a fully competitive electricity market will help the environment. Competitive markets will encourage new plants, enhance energy efficiency and foster new technologies. As new, cleaner technologies reshape the industry, increased efficiency will lead to reductions in emissions. For now, I think we need to let the markets work.

In addition, I am confident that an open market will lead to innovative and successful marketing of green power. Pilot projects in several states have been extremely successful. Marketers selling green power will emerge all over the country. The laws of supply and demand will secure the future of green power more surely than any government mandate.

In the end, it comes down to the power to choose. Can Congress muster the political will to do the right thing?

An open electricity market is inevitable. There is nothing that anyone can do to stop it. But some multibillion-dollar utilities are doing their level best to shoot competition in the back. Their battle cry is "states' rights." They know that if the states act as 50 individual entities, it will be many years before they are forced to face a truly competitive market. Under that scenario, American families and businesses will pay hundreds of billions of dollars in artificially high rates.

Those of you who know me know that I don't mince words. As the guy who has to count votes in the House, I'm here to tell you that we have a lot of work to do. Those of you fighting for customer choice need to aggressively join the battle. We are facing a determined and formidable opponent, and the window of opportunity in this Congress is not getting wider.

Nevertheless, I'm optimistic that the 105th Congress will act on a bill guaranteeing customer choice. We have two major assets—Commerce Committee Chairman Tom Bliley and Energy and Power Subcommittee Chairman Dan Schaefer. They have been tireless advocates of customer choice and competition. Do not underestimate their commitment to this issue or their legislative skills.

Most important, we have the truth on our side. When families and businesses around the country learn what they stand to gain, they will demand a choice, and Washington will respond.

And that, ultimately, is the real challenge. This battle is not going to be won inside the Beltway. The true test will be whether or not we are successful in carrying our message to people of this country. America's families and businesses deserve the kind of choice that a truly competitive market in electricity will provide.

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