
Letters

We welcome letters from readers, particularly commentaries that reflect upon or take issue with material we have published. The writer's name, affiliation, address, and telephone number should be included. Because of space limitations, letters are subject to abridgment.

Stranded Costs, Strained Rationale

TO THE EDITOR:

I was particularly interested in Robert Michaels's and Vernon Smith's discussion of the "implicit regulatory compact," (Robert J. Michaels, "Stranded Investments, Stranded Intellectuals," and Vernon L. Smith, "Regulatory Reform in the Electric Power Industry," *Regulation*, 1996 No. 1) the nature of which I believe has been widely misunderstood. Utilities generally argue that the to-be-stranded investments were made pursuant to the utilities' obligations to serve the customers who now want to flee them in order to benefit from the lower cost of new entrants; that these investments were made pursuant to a set of rules that should not be changed *ex post facto*; that regulators had approved these investments as prudent; and that the magnitude of the stranded, or more precisely, now uneconomic investment is so great that writing these assets down to market value would be tantamount to bankrupting the entire industry.

I have some visceral sympathy for these arguments. But I wonder first, whether "stranded investment" is a new phenomenon, was unforeseeable, and therefore constitutes a risk for which investors have not been compensated. After all, utility investors have always been exposed to what I believe Department of Energy Deputy Secretary Charles Curtis has called "load mobility"—plant closings, relocations, and switches to self-

generation. Second, no one who has suffered through hearings in which state commissions calmly excluded from rate-base billions of dollars of investment in facilities they had urged utilities to build, can fail to shed a tear for the utilities' current plight. But that experience was a warning to all save the deaf and blind of the vagaries of the regulatory process, of the inability of a commission to bind its successor, even of its unwillingness to bind itself from one rate case to another. Surely, investors singled in the fires of prudence reviews can't now credibly argue that they were unaware of the risk of lurches in regulatory policy.

So I am not sure how far the "you can't change the rules in mid-investment" argument carries the case that shareholders should be shielded from the effects of competition on the value of their investments. Is it not equally plausible to argue that investors were on notice that regulatory rules change, that they made their investments forewarned of that possibility, and that they have in the past been compensated for the risks of such changes?

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Devilish Details of Deregulation

TO THE EDITOR:

The "regulatory compact" is a deal between the government and a private firm. (In electric markets, the modern compact was proposed by Samuel Insull in 1898 when he tired of competition. It is now approaching its centennial.) A firm's right to stranded-cost recovery can be viewed as a property right that results from the "deal"—often, very poorly specified. Because it is poor-

ly specified, we must debate what it is after the fact. When deals are unspecified and parties cannot agree, the American tradition is to ask the "people" to resolve disputes through governance structures. A key to a better future is contracts specific enough to address inevitable risk before the fact, not compacts that require outsiders to settle problems after the fact. This is the best way to discipline risk taking beforehand and avoid interminable disputes afterward.

Try as we might to wish each cost away, regulatory compacts have resulted in huge, uneconomic sunk costs now called "stranded" costs. One result is the stranded-cost debate that has matured into a duel of trading quotations. Michaels employs this device at a rate of more than three times per page. Just a few of the often quoted words and phrases include "fair," "prudence," "implicit," "efficient," "mitigation," "obligation to serve," and "regulatory compact." To an outsider or even to a seasoned regulator, the debate begins to sound like a conversation between Alice and Humpty Dumpty in *Through the Looking Glass*. After some testy exchanges Humpty declares, "When I use a word, it means exactly what I choose it to mean—neither more nor less." Soon after, Humpty had his great fall.

With over \$100 billion at stake, the debate becomes very heated and very philosophical. Some have invested heavily in intellectual firepower to defend stranded-cost recovery on efficiency, legal, and fairness grounds. William Baumol (who appears as a villain in Michaels's paper) and others have offered up a theory that it is necessary for efficiency to ensure recovery of stranded costs. These intellectuals have at least ensured they are not stranded financially.

If there is no stranded-cost recovery, many utilities will engage in a corporate "life or death" struggle to oppose or slow the transition. "Stranded" costs are not currently stranded. They are in rates getting 100 percent recovery. The status quo is a winning strategy for those with high stranded costs. But prolonging the status quo delays greater choice for buyers and sellers and almost certainly leads to additional costs which further wars of cunctation.

Electric markets are neither

infant nor simple. The challenge is to manage the transition to greater competition and customer choice without renegeing on previous commitments. Smith proposes new market structures and institutions without addressing the transition. I agree with most of Smith's positions and have with others suggested ways to make the transition (see O'Neill and Whitmore, "Network Oligopoly Regulation: An Approach to Electric Federalism" in *Regulating Regional Power Systems* [Quorum Books, 1995] and O'Neill and Stewart, "Auctions with Incentives for Fair and Efficient Pricing of Public Utility Services" OEP Technical Report, FERC, Washington, D.C., 1989), but I cannot resist a few quibbles.

In Smith's article, Baumol, a father of an advanced classroom exercise called contestability theory, reappears as a hero. Outside the classroom, electric markets are both dynamic—that is, they evolve with a logic of their own—and inert—that is, they cannot be moved easily in prescribed directions. When frictions and constraints are added to a dynamic process, the results are difficult to put into the orderly mathematical melodies of most economics. Kirkoff's laws are introduced in engineering classrooms, but are often omitted from economics classrooms.

The electric industry has generated its own jargon for its transactions. If the transaction is a "handshake" or two people fixing their names to an agreement, the electric industry now calls the result a "bilateral" transaction. If at some point the transaction takes place between more than two people and is disciplined by some preestablished rules, it becomes an "exchange." If trading takes place in a well organized exchange, the result is called a "poolco."

A poolco is considered the ultimate government evil by some bilateralists. In this debate, understanding the economics and the physics is the key to the trading rules. Smith supports an auction process and apparently rejects the idea of "physical bilateral" contracts. But tradable contracts can be valuable in the presence of uncertainty or transaction costs. They also may prove to be either less than marginal or very expensive. Rational behavior should lead the

holder of such a contract to participate in short-term auction markets, provided that those markets are structured attractively. On the other hand, the bilateralists would like the markets to be free from physics and transaction costs. Poolco advocates occasionally assume perfection in an institution that does not exist yet. It must be clear that each group is choosing its preferred governance structure for power trading and operating the transmission system. Neither advocates a free market. To achieve its ends, each group would outlaw certain transactions. I do not find this comforting. Why not allow exchanges to coexist with bilateral contracts?

Despite the howls of outrage from would-be middlemen, auctions or organized exchanges are as old as recorded commerce. Through history, most societies have had agoras or market centers along with detailed trading rules. They are not, as some imply, the product of recent socialist thought.

Smith calls upon antitrust laws to regulate transactions, but never explains why he holds antitrust laws in such high regard, or why they are the appropriate governance structure. Antitrust laws appear to be a safe harbor, panacea, or copout for those who cavalierly consider them part of the "free" market. But it is unclear why the federal courts are the right governance structure for an industry that presents technical problems as complex as the electric industry does. Physics is not the usual expertise of an antitrust court. Indeed, it is sobering to ask just what *is* the usual expertise of an antitrust court.

To achieve efficiency in classroom-type exercises consisting of even simple three-node networks, some analysts require multilateral agreements that involve all players. Translated and decoded this means governance structures or regulation, even though advocates of a free market find it hard to say the words. Electric markets are and will be highly technical games that often have empty cores. According to Von Neuman and Morgenstern, "standards of behavior" or "social organization" are needed to resolve these problems.

Many in this debate suffer from either agoraphobia (a fear of open markets with trading rules) or lib-

eraphobia (a fear that any rule, including the laws of physics, may cramp one's style). Julian Simon's article (*Regulation*, 1994 No. 2) shows the reluctance of industry insiders and some free-market economists to accept proposals for change, and illustrates their occasional tendency to be myopic or suspicious of structured auctions. (In Simon's article, the auction dealt with airline overbooking.) These phobias must be cured and trading rules established by industry players, not antitrust courts.

The Federal Energy Regulatory Commission (FERC) recently issued the rules for recovery of stranded costs, competition, access, and network trading in electric-futures markets. FERC has been reforming the natural gas industry for more than a decade. Competition, access to transportation, and network trading rules have been key. FERC's regulation has generally received positive and sometimes rave reviews—including some in *Regulation*. However, a review of current gas markets suggests that while open access and unbundling have worked very well, the generally bilateral approach to trading has been slow to deliver well functioning intraday markets; hence, explaining the existence of apparent price anomalies in the grid, impressionistic price reports, and highly confused daily and intraday markets.

In electricity, few have proposed deregulating transmission service at this time. The sparks fly and governance is important at the interface between the users and the operators of the network. The network operator is the natural choice to operate a short-run power market. To be trusted, the operator needs to be independent of individual players in the power markets.

A well managed auction market for generation will allow more immediate competition than any other approach. A weakly managed transmission system will inhibit choice and competition, and may lead to unnecessary regulation of generation and consumer choice. Of course, getting a well managed auction process is not easy—"the devil is in the details." It goes without saying, counting devils in the details is equivalent to counting angels on the head of a pin. Both are better done in the classroom.

Recently NYMEX introduced two electric-futures contracts. The zealous marketing of derivative contracts led to "hedging losses"—a new oxymoron in the financial statements of natural gas companies. Caveat emptor.

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Ending Insull's Legacy

TO THE EDITOR:

I have two areas of comment regarding your excellent survey and analysis of the electric restructuring debate in the last issue of *Regulation*.

My first observation is that public utility regulation is a double-edged sword for its proponents. Samuel Insull, the father of political electricity, had pains of conscience about his creation. He stated in a 1915 speech: "Sometimes I wonder whether this regulation may not check enterprise and destroy individuality in management. I sometimes ask myself whether we are not in danger of drifting to a species of paternalism which will end in our simply fulfilling our allotted task and being satisfied with just what we have today." Insull was focused on the short run; we now are in the long run—where entrepreneurially challenged utilities facing the prospect of massive cost write-offs from competition, are either arguing against competition or redefining it as something other than direct customer choice (something that Vernon Smith seems to endorse with a physics-based non sequitur advocating a mandatory poolco).

Given their regulatory inheritance, the consternation of those electric utilities resisting competition should not be directed toward the free-market think tanks, market-oriented economists, end users, or power marketers, but toward Samuel Insull and the National Electric Light Association (the predecessor to the Edison Electric Institute) for transforming a very competitive, consumer-driven electricity market into a natural/legal monopoly in 1887 and the 1905-34 period. (See my article, "The Origins

of Political Electricity: Market Failure or Political Opportunism?" in the *Energy Law Journal*, Vol. 17, No. 1.)

A second general comment is that nondiscriminatory open access to the transmission grid is, as William Niskanen notes ("A Case against Both Stranded Cost Recovery and Mandatory Access," *Regulation*, 1996 No. 1), not deregulation, but the substitution of one regulatory structure for another. (The same can be said for the open-access regime of the interstate natural gas market.) Despite this, what is attractive for the market-oriented economist is the deregulation and *deregulatory dynamic* that is created by the halfway house of open access. In the short run, mandatory open access splits a vertically integrated "natural monopoly" into its "competitive" component (generation) and its "natural monopoly" component (transmission) to immediately deregulate the former. Creeping competition and a "deregulatory gap" then can create pressure in the transmission sector to liberalize and then deregulate rates and terms of service. This in fact is under way with interstate natural gas transmission, where FERC is increasingly entertaining, however timidly, moves toward market-based rates. Eventually, private agreements between shippers and transmission owners (settlement agreements between shippers and regulators) can replace mandatory open access with contractual requirements to completely deregulate the electric sector, displacing FERC on the interstate side and state public-utility commissions on the intrastate side. That is the end state—true deregulation—that Cato aims to achieve without forced open-access transition.

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Allowing More Entry

TO THE EDITOR:

A common view that competition should be used more and government regulation less is shared by four recent articles on natural gas and electric power regulation (Vernon L. Smith, "Regulatory Reform in the Electric Power Industry"; Robert J. Michaels,

"Stranded Investments, Stranded Intellectuals"; Kenneth W. Costello and Daniel J. Duann, "Turning up the Heat in the Natural Gas Industry"; and Joseph P. Kalt, et al., "Regulatory Reform and the Economics of Contract Confidentiality," in *Regulation*, 1996 No. 1). I believe a stronger role than I see in these articles should be played by the threat of entry—a role in which entrants can add to existing facilities as well as create whole new ones.

The aforementioned authors and I all agree on one tactic—that competitive services should be separated from those that may not be competitive, and that regulatory constraints should be removed from the competitive services as much as possible.

In natural gas, we should unbundle the natural gas itself from its transportation, as has been done at the interstate level. Clearly this process should be extended to the local distribution level. Regarding electric power, we should unbundle electric power itself from its transmission. We should free natural gas producers, electric power generators, and any other sellers of the commodities themselves, at least those not affiliated with the transporter.

I also expect that we would generally support, even though we may perceive various problems, an attempt to create competition for the regulated services through the joint use of common facilities.

In natural gas, FERC has created over the last decade a largely competitive secondary market for interstate pipeline transportation, wherein the holders of long-term rights may resell their unused rights. FERC has tried to promote competition by creating as much flexibility as possible in the rights held, by using more standard trading procedures, and by incorporating a use-it-or-lose-it provision (i.e., interruptible service). These features have created problems of their own such as some cumbersome and ill-advised trading rules using bulletin boards; however, it seems that FERC is starting to understand these problems and may at least be moving in the right direction.

For the electric power industry, Smith proposes using a "smart market" based on central dispatch wherein nodal pricing is determined from bids to purchase

power, offers to sell power, and physical constraints that the transmission system must satisfy. This market, and the transmission system itself, would be operated by the joint owners of the common system. The industry is at least considering movement in this direction with independent system operators, but it appears that it will be some time before Smith's vision is realized.

I further expect that we would generally agree that we should remove economic regulation to new entry. As economists, we see that the possibility of entry disciplines prices, as has been the case with the utilities themselves. Observe that pipelines, railroads, and power companies have often supported regulation, but only when it protected them from entry. Also as Smith stresses, if a monopoly is indeed natural, it does not need protection from entry. And rarely is an entrant actually going to construct unnecessary, duplicate capacity. The incumbent would usually respond to a credible entry attempt with improved terms to beat the entrant, or if not, the entrant might serve its customers using the otherwise unused capacity from the incumbent.

In natural gas, FERC has gone in this direction—though again not far enough—by allowing the market a bigger role in determining where, when, and if new pipelines should be built (e.g., with the Iroquois, Kern River, Mojave, and Altamont pipelines), and by allowing bypass of local distribution companies with new capacity from laterals of existing pipelines to serve an industrial customer directly. FERC should go further in this direction and apply this approach at the local level. With regard to electric power, recent regulatory changes have promoted entry of independent power producers, but such an approach has not been followed with transmission. In both industries, further advancement may require statutory changes in order to alter dramatically the process of gaining a certificate of "public convenience and necessity."

A further advantage gained by allowing these entry rights is that they would limit the recovery of stranded costs in a transition period toward a more competitive reg-

ulatory regime, providing a qualification on their recovery. Certainly the risk of regulatory change can be minimized if regulators honor rules established by previous regulators as supporters of full recovery of stranded costs argue, but efficiency may be improved in a broader political-economy setting if participants realize that high earnings promised by corruption or stupidity may not be collectable, and that they face some risk from possible obsolescence. I believe that this is an appropriate qualification: the right of entry would effectively cap the prices of any services to those that might arise from new facilities. Even with these broad areas of agreement, I believe further opportunity for entry into these markets should be required.

First, any pipeline existing or new should be able to interconnect with another if it pays for all of the costs of interconnection; and any potential customer should be able to have a tap constructed if it pays for all of these costs. Second, any qualified rights-holder should be able to purchase a share of the rights in the jointly controlled system if capacity exists. If the pipeline or transmission operator holds rights to existing capacity, it should be required to sell these rights to others at a regulated rate. This opportunity would eliminate the possibility that a pipeline or transmission operator could, over time, regain rights to its system and then successfully withhold capacity from the market to support inappropriately high prices.

And finally, any qualified rights-holder should be able to initiate a capacity expansion if commitments to cover all appropriate fixed costs are offered prior to construction. Any financially qualified outsider then has the opportunity to join the club of joint "owners." The threat of exercising this opportunity would prevent monopolistic profit from being earned in the long run.

These entry rights, if properly implemented, would effectively eliminate entry barriers into the market for selling services, so that the resulting markets would be competitive regardless of "market concentration." The existing, cumbersome trading rules would then no longer be necessary. These rights alone would allow many of the benefits of competition to be

realized in these heavily regulated industries.

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Keep Electricity Free from Antitrust

TO THE EDITOR:

Vernon L. Smith's "Regulatory Reform in the Electric Power Industry" correctly exposes the myth of how government regulation and monopoly came to the electric utility industry. And Smith's privatization model is a thoughtful step in the right direction, toward a policy under which all parties would be subject to the ordinary antitrust laws applicable to any other industry.

Evidence mounts that the "ordinary antitrust laws" themselves have been one of the greatest impediments to the development of competitive markets. Ironically, they have the same sad "history" as the one Smith exposes for the electric utility industry: they were supported by interests that opposed the entrepreneurial success of new and innovative business organizations.

Economists, not ordinarily misled by legislative "intent," are almost consistently misled by the stated intentions of antitrust law. The laws claim to "promote competition," so economists, generally oblivious to economic history, simply assume that they have done so. But as with rent controls, tariffs, and almost every other government intervention, almost precisely the opposite is true. The laws have been used at both the federal and state levels to restrict and restrain the competitive market process. Antitrust has been employed to regulate trade, not free it. It has been employed to control market pricing, marketing, cooperation between firms, and entrepreneurial activity. Antitrust is an insidious form of industrial planning and is misplaced in any proposal to deregulate anything. Antitrust is regulation.

The electric utility industry (and the property/casualty insurance business), both generally free of federal antitrust regulation, should

retain their current immunity if and when they are deregulated. It hardly makes for sound principle or economic sense to swap attorneys at the state public utility commissions for attorneys at the Justice Department and Federal Trade Commission.

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The Deregulatory Constitution

TO THE EDITOR:

The most recent issue of *Regulation* offered two related articles on the U.S. electric utility industry, "Stranded Investments, Stranded Intellectuals," by Robert J. Michaels, and "Regulatory Reform in the Electric Power Industry," by Vernon L. Smith. While both articles are largely correct in their technical conclusions with regard to economics, they share common omissions of fact, and thus also omit what should be a common conclusion. The omissions lie in understanding the premises of the U.S. Constitution. Thus, neither author fully realizes what "deregulated" electric markets would be like in the United States.

Consider first that Michaels is properly skeptical of the existence of an "implicit regulatory compact." This "compact" is a purported agreement on the part of regulated companies to provide service in exclusive territories in exchange for some form of assurance of rate of return and recovery of capital. Legally, the existence of this "compact" is often referenced to the 1943 decision of the Supreme Court in the *Hope* case. The case resolved a dispute between the Hope Natural Gas Company and the Federal Power Commission (FPC, now the Federal Energy Regulatory Commission or FERC) over the discretion allowed the FPC to determine the rate of return required to be given to Hope. Hope lost in appeal; the FPC was not required to grant whatever the applicant utility sought, but only a rate of return that would allow a company to operate successfully and compensate its investors for the risks they assumed.

Losing a Supreme Court case hardly creates a voluntary "compact." But were this decision all that the Supreme Court ever said about the matter, there might be some sense to the "compact" argument. However, the very next year, the Supreme Court decided another case in which the appealing utility also lost. This was a dispute between the Market Street Railway, a public service transportation company in San Francisco, and its regulatory body, the California Railroad Commission. In this decision the Court was so concerned about possible misinterpretation of the *Hope* decision, that it specifically cross-referenced that decision. The Market Street Railway sought recovery of the cost of the plant (depreciation). The California regulator denied full recovery. By the time of the Supreme Court decision, the utility was already bankrupt. This caused the court no tears: it said, "It was noted in the *Hope* natural gas case that regulation does not assure that the regulated business make a profit. . . . All that was held was that a company could not complain if the return which was allowed made it possible for the company to operate successfully. There was no suggestion that less might not be allowed when the amount allowed was all that the company can earn. . . . The due process clause has been applied to prevent government destruction of existing economic values. It has not and cannot be applied to insure values or to restore values that have been lost by the operation of economic forces. . . . Even monopolies must sell their services in a market where there is competition for the consumer's dollar and the price of a commodity reflects its demand and use." Thus, despite the language of the *Hope* case, a regulated utility was not guaranteed recovery of costs "lost by the operation of economic forces."

The matter could hardly be plainer. There is no legal basis for a compact or social contract guaranteeing utilities recovery of bad investments. On the contrary, there is explicit assurance in case law that there is no guarantee of recovery of investments lost as a result of market forces.

What is left, therefore, is the politics of regulation. It is on the

political questions, particularly the relative powers of state and federal governments to control markets, that the debate on deregulation of energy has slipped off of its constitutional foundation. Consider for example what Smith stated on page 43: "The California Public Utilities Commission has announced its intention to allow electricity customers in that state the freedom to shop both inside and outside the state." This probably accurately represents the state of mind of regulators in California who appear to believe that they have the power and duty to decide who may participate in markets in California, and on what conditions. Daniel Fessler, president of the California Public Utilities Commission, has argued publicly that the relationship between the states and the federal government is that the states may and should do as they wish; the federal government is to act only when there is a vacuum. In this view, deregulation is merely a question of power sharing—allocating absolute power over persons by mutual agreement among governments.

Some governments, for example the British parliamentary system, may well approach this image. In an absolutist framework of government, if one advocates markets, then recommendations of the sort discussed by Smith probably are proper. This is because he has identified many technical features that might be measures of whether a market is competitive. For example, if it is empirically true that "prices at different nodes in the network. . . reflect the marginal cost of energy lost in transmission," then we would be inclined to reinforce a belief that the market is competitive. Under an absolutist government, these may also become design criteria for efficiency-seeking administrative actions that direct the decisions of private parties.

We have the "stranded intellectuals" mentioned by Robert Michaels because so many analysts of the American system also accept this absolutist view of the powers of American government. But remember the structure of American government: the federal government has certain enumerated powers, the states have everything else, except where the states also are limited by further restrictions in the federal Constitution (or

by each state's constitution). The idea that the states may act as they please and the federal government only acts when the states leave a vacuum is the antithesis of the U.S. constitutional design.

In particular, the federal Commerce Clause is exactly the opposite of a broad grant of power to the federal government to regulate markets. One defect of the Articles of Confederation that the Framers sought to correct in 1787 was that states had enacted laws that protected local markets. The Commerce Clause of the U.S. Constitution gave the federal Congress power to "regulate commerce with foreign nations, and among the several states" for the purpose of preventing states from protecting local merchants. The intended constitutional role of the federal government in regulating commerce among the several states was to open entry to local markets for persons from other states when a state by its actions blocked such entry.

It is thus highly ironic that the classic case used today to argue for an expansive view of the federal commerce power, *Gibbons v. Ogden* (1824), upheld federal action that opened markets closed by state actions. *Gibbons v. Ogden* upheld a federal right of access to ports for the modern technology of steam-powered ships, when competing state exclusive licenses (patents) had attempted to close them by grants of local monopolies. Careful reading of the Constitution shows that the federal government also has no power to grant exclusive territories. Words that might convey such general power, like "franchise," "patent," or "copyright" do not appear in the Constitution. Even the so-called Patent Clause in Article I, section 8, which is the place such language should specifically appear if these explicit powers were intended, does not contain these words. The history of the Constitution shows that the Framers intentionally refrained from using those particular words. The language of the commerce and patent clauses, taken together, is

carefully crafted to grant only the specific forms of power actually listed, and thus to limit the use of interstate commerce power to opening markets closed by state action.

Modern analysts have elaborated out-of-context, narrow language from the *Gibbons v. Ogden* decision in order to broadly expand the "commerce" powers of the federal government. If used today only in the circumstances to which that decision applied, then the legal basis for much of the present federal welfare state would collapse. Certainly, state and local franchises would not be supported if competition from new technology permitted more open markets.

What now of the intention of California to "allow electricity customers in that state the freedom to shop both inside and outside the state"? If the markets of California are closed by state action, the role of the federal government was not to agree meekly that this was acceptable because the state had chosen to act. The role of the federal government, the very meaning of the Commerce Clause as applied to federal-state relations, is that the Congress should open markets closed by California's (or any other state's) action in granting exclusive territories. This should be the federal role in electricity markets, as well as any other market.

The proper institutional framework for energy "regulatory reform" is therefore an easy issue, if the structure of the American Constitution is carried out. Both authors from your recent issue agree that local utility markets are protected from outside entry by state action. Both agree that there are no true natural monopolies in local electricity markets, only state-granted exclusive territories. The role of the federal government in such circumstances is to open the markets by removing state restrictions. No further elaboration of the post-deregulation regulatory structure is required. Since it is federal antitrust laws, not federal regulatory commission statutes, that implement the intent of the Commerce

Clause, the real deregulation debate should be about how to limit the exercise of antitrust laws so that they do not become merely another tool for market manipulation by government. The states could help by removing their restrictive utility statutes, thus removing the need to overturn them by court or congressional action.

Indeed, because utilities are not exempt from antitrust laws (despite popular belief to the contrary), and because the states certainly are not exempt from the federal Constitution, it should be surprising that state protection of local utilities has not already been overturned by the courts. Perhaps also void are specific federal grants of territory allowed to natural gas companies under the Natural Gas Act: it may also be the case that the Federal Power Act is void, since in certain ways it specifically exempts local protected territories from the reach of the act, thus removing itself from the interstate, domestic application for which the federal commerce power was intended. Based on this narrower reading of the commerce and patent clauses, any federal statute that grants or protects exclusive territories—except those specifically authorized by the U.S. Constitution, Article I, section 8—is also probably void, or should be repealed.

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Editor's Note

Fred Siskind, author of "Just the Facts" (Letter, last issue), wishes to note that the views expressed in his letter do not necessarily represent those of his employer, the Department of Labor.