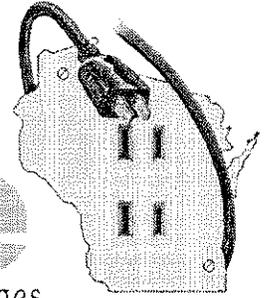


A Coalition  
to preserve  
Wisconsin's  
Reliable and  
Affordable  
Electricity

# Customers First! the Wire

Plugging you in to electric industry changes



608/286-0784 • P.O. Box 54 • Madison, WI 53701 • www.customersfirst.org • SEPTEMBER 2013 • Vol. 18, No. 9

## A retail wheeling revival?

Bad ideas are persistent things. Thirteen years after electric utility restructuring blew up in the faces of California energy customers, it's back for another try in Arizona, where the state's Corporation Commission is expected to issue recommendations this fall after reviewing public comments collected through mid-August.

Ironically, Arizona is one of five states that laid all the groundwork long ago, adopting retail electric competition back in the 1990s but then repealing it just in time, after seeing California go over the cliff.

Driving the bus this time around is an organization called Arizonans for Electric Choice and Competition (AECC). The group has a website that identifies it as "a voice for Arizona

electricity users who support electric competition, which would allow families, businesses and government entities to shop for their electricity," adding, "Our mission is to promote a fair and competitive electricity market for the benefit of all Arizona consumers."

We can only say that's awfully thoughtful of them, considering that the member companies aren't, for the most part, from Arizona. Certainly, some of the members are; but AECC essentially consists of very large, national and multinational corporations in energy-



## Speaking of California...

The beating goes on. More penalties have been announced for electricity marketers who manipulated California power prices in ways reminiscent of the manufactured energy crisis more than a decade ago. The only thing new in the latest round of manipulation and retribution is the size of the individual penalties, now approaching the half-billion-dollar mark.

At the end of July, the *Sacramento Bee* quoted California regulators saying they got "every penny" they demanded in a settlement with J. P. Morgan Chase—reported here previously—that forced the company to refund or give up claims to \$410 million arising from energy market manipulations during recent years.

Officials say it's not the same old thing, and that the Morgan case is "the exception to the rule," according to the *Bee*.

But earlier in July, the Federal Energy Regulatory Commission (FERC) announced it would fine Barclays Bank \$453 million for manipulating electricity trades in California, Arizona, Oregon, and Washington between 2006 and 2008.

Assuming the FERC prevails—London-based Barclays is fighting the penalty—the fine would be the biggest levied in the agency's history. As things stand now, that distinction belongs to the J. P. Morgan case.

Officials say Barclays energy traders made deceptive short-term transactions that duped competitors into misinterpreting long-term price trends, then they made long-term transactions that capitalized on the competitors' mistaken expectations. ⚡



intensive businesses and—surprise—energy marketers. Prominent among the AECC membership are Constellation, a Maryland-based energy marketing affiliate of Chicago's Exelon (Com Ed) Corp., and Direct Energy, headquartered in Houston but owned by Centrica plc, one of the world's biggest energy marketers and based in England.

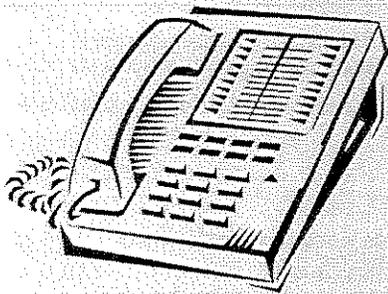
Lining up on the other side is the Arizona Power Consumers Coalition (APCC), with a formidable membership roster not unlike the *Customers First!* Coalition in its diversity. The APCC includes the Arizona Agribusiness Council, the Arizona Association for Economic Development, the state's Community Action Association, Realtors, Hispanic Chamber of Commerce, Urban League, a local Republican political organization, municipal and cooperative electric utilities, and the Arizona Diamondbacks baseball franchise, to name just a few.

The APCC points out that Arizona electric rates are currently below the national average, while states that have adopted retail competition have seen their rates soar—interestingly, by 60 percent in Constellation's home state of Maryland and 53 percent in Exelon's home state of Illinois. Average residential rates in states with

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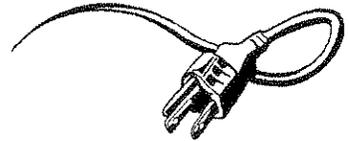
THE WIRE is a monthly publication of the *Customers First!* Coalition—a broad-based alliance of local governments, small businesses and farmers, environmental groups, labor and consumer groups, retirees and low-income families, municipal electric utilities, rural electric cooperatives, wholesale suppliers, and an investor-owned utility. *Customers First!* is a coalition dedicated to preserving Wisconsin's reliable and affordable electricity.

If you have questions or comments about THE WIRE or the *Customers First!* Coalition, please call 608/286-0784.



## KEEPING CURRENT

With CFC Executive Director Matt Bromley



Two recent rulings from a federal agency that oversees the nation's freight rail industry are a mixed bag for those of us concerned about the high cost of moving products—like coal—by rail and the impact on electricity prices. In one decision the Surface Transportation Board (STB) raised the amount of relief it can award to rail customers/shippers who successfully challenge some rail rates. In another it allowed the Burlington Northern Santa Fe Railroad to count the \$8.1 billion premium Berkshire Hathaway paid to acquire the rail company in the formula used to calculate prices for some shippers.

The rate-relief decision should help shippers who've been reluctant to bring a rate case before the STB because of the high litigation costs, but the BNSF decision may make it harder for some rail customers to challenge their rates.

The decisions by the STB illustrate the difficulty shippers have had in getting meaningful relief from the anti-competitive practices of the major railroads. Since the mass consolidation of the freight rail industry, competition between railroads has dramatically decreased, leaving many shippers with no competitive transportation alternative. Where there is no competitive market, the STB is charged with protecting the public from unreasonable pricing, but its policies and decisions have historically favored the railroads. The current regulatory structure has failed to foster a truly competitive environment as Congress envisioned when it deregulated the rail industry. Among those harmed in this environment are Wisconsin utilities and ratepayers who are paying excessively high prices for the delivery of fuel to power homes, farms, and businesses.

While shippers welcome the higher monetary limits the STB can award in rate-challenge cases, those served by only BNSF are concerned that the decision on the Berkshire Hathaway acquisition premium will make it nearly impossible to even bring a rate challenge to the board. A captive shipper can only challenge rates that are above 180 percent of the railroad's variable cost. Allowing the BNSF to include in its costs the \$8.1 billion above market value Berkshire Hathaway paid to buy the railroad raises the threshold for challenging rates at the STB.

Despite the BNSF ruling, there is hope that the STB will take more meaningful steps toward a more competitive market. Some in Congress, including Wisconsin Congressman Reid Ribble, are watching closely. Ribble recently sent STB Chairman Daniel Elliot a letter noting that 97 percent of all rail stations in his northeast Wisconsin district are captive to one railroad. He urged the agency to take immediate action to address the imbalance in market power between railroads and shippers. 💡



Bromley

## Getting burned in Florida

No, it's not the sun. Duke Energy customers in the Sunshine State are burned up that their public utility regulators are allowing the big utility to bill them for the trouble-prone and now retired Crystal River nuclear plant. It stopped producing power a long time ago, but not nearly so long as Floridians will be paying for it.

At the beginning of August, regulators approved a rate increase for Duke's 2 million Florida customers, starting in January and lasting up to seven years to pay for the Crystal River

Plant, permanently retired earlier this year.

The plant has been inoperable since workers accidentally damaged a concrete containment building four years ago. Attempts at repairs instead resulted in more damage and this year Duke decided to cut its losses.

The Crystal River rate increase—about 89 cents a month for the average customer—comes on top of a previously approved surcharge for Duke's construction costs on a new \$25 billion Florida nuclear plant, a project the utility walked away from last month. 💡

# The big blackout, 10 years later

August 14 marked the 10th anniversary of a blackout that darkened eight states and a big chunk of Canada, barely missing Wisconsin, all because of lackadaisical tree-trimming under an Ohio transmission line. There's been nothing remotely comparable since, so are we adequately protected against a repeat performance?

The North American Electric Reliability Council (NERC) isn't so foolish as to make guarantees, but it does express confidence in the remedial actions taken in response.

"Since [the blackout]," the NERC said last month, "the electricity industry has made significant progress in improving reliability," adding, quite accurately, "The 2003 event was a turning point that led to mandatory and enforceable standards for the bulk power system, the creation of an international electric reliability

organization (ERO) and renewed industry focus on reliability."

It took until the spring of 2004 for an official inquiry to determine the proximate cause of the estimated \$6 billion mishap and the inadequate reactions that allowed the problem to get that big. The trigger was an Ohio utility's transmission line sagging in summer heat and coming in contact with inadequately trimmed trees.

During the decade that's followed, the NERC said, the electric industry "has made significant progress in vegetation management, protection system relay loadability, increased emphasis on situational awareness, enhanced

operator training, new and improved situational awareness tools and technology, and better information-sharing between systems."

Arguably the most important change came in the form of congressional action that elevated NERC from an organization that set voluntary standards for utility operations to one with the authority to see that those standards are applied.

We wish we could bring you more details of the NERC statement on the events of August 2003, but when we tried repeatedly to view it on the organization's website—and maybe it's just our computer but we are not making this up—it kept blacking out. 💡

## Revival?

Continued from page 1...

retail competition are 26 percent higher than in states without it, they say.

As *Customers First!* warned in Wisconsin as far back as 1995 and APCC argues today, the big concern is marketers "cherry-picking" the highest-volume power users and offering them favorable rates, leaving smaller users and residential customers to pick up the slack and pay more.

As APCC puts it on its website, "Residential customers face numerous competing options, but none offer the savings realized by large customers."

Also interesting: Though the Arizona Corporation Commission is expected to come up with a set of recommendations on the matter this fall, its website lists nine energy-related topics under "Top Issues," and retail electric competition isn't one of them. 💡

## Energy saver tip

Even if it's in perfectly good working order, your water heater could be costing you money needlessly if the temperature is set too high. Setting it higher than 120 degrees almost certainly means you'll be paying to heat the water and then turning on the "cold" tap to cool it back down. 💡

## Yucca lives—for now

A federal appeals court has ordered the Nuclear Regulatory Commission (NRC) to re-engage in the licensing process for a national nuclear waste repository in Nevada. The commission says it doesn't have enough money to finish the job; however, it might have enough to deliver a crucial report that's overdue and said to contain findings that the site meets revised and more stringent safety requirements.

The court ruled in mid-August, 15-and-a-half years after the statutory deadline for the government to provide a permanent repository for high-level nuclear waste. The order from the U.S. Court of Appeals for the District of Columbia Circuit won't necessarily mean opening the partially completed Yucca Mountain facility, but it does compel the NRC to proceed with review of the project, defunded by Senate Majority Leader Harry Reid (D-NV) and ordered shut down by the Obama administration.

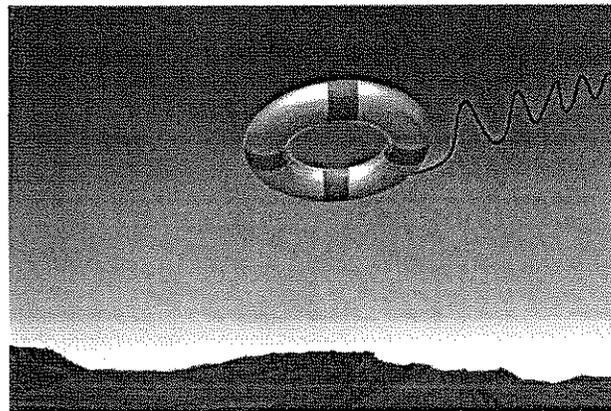
The project has been legally overdue under three different administrations. The Nuclear Waste Policy Act (NWPA) set the deadline to open a facility for the end of January 1998.

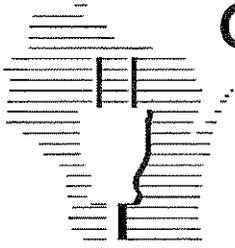
In the court order, Judge Brett Kavanaugh noted that the NWPA requires the NRC to act on an application within three years but it has made no decision on the Department of Energy's 2008 application to license Yucca Mountain and is holding more than \$11 million in congressionally appropriated funds for processing the application.

"By its own admission, the Commission has no current intention of complying with the law," Kavanaugh wrote, adding later, "The Commission is simply flouting the law."

In a concurring opinion, Senior Circuit Judge A. Raymond Randolph noted that former NRC Chairman Gregory Jaczko "unilaterally" terminated regulatory review in 2010 and "instructed staff to remove key findings from reports evaluating the Yucca Mountain site."

The review was terminated in October 2010, just a month before scheduled release of a staff report intended to answer the question whether, in the judgment of NRC staff, the facility would remain safe for—and we're not making this up either—one million years. 💡

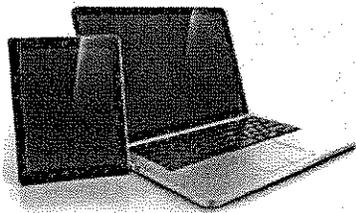




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Madison, WI 53701

A **Coalition**  
to preserve  
Wisconsin's  
Reliable  
and Affordable  
Electricity



Be sure  
to check out  
the *Customers First!*  
website at

**[www.customersfirst.org](http://www.customersfirst.org)**



## Quotable Quotes

*"The benefits that electric competition has delivered to residents and businesses in other states are long overdue in Arizona."*—Arizonans for Electric Choice and Competition

*"'Deregulated' states have higher electric rates, less reliability, and more customer complaints."*—Arizona Power Consumers Coalition

—From the rival organizations' respective websites, August 2013.

Help us share our messages with others. If you know of businesses or organizations that would like to learn more about protecting Wisconsin's reliable and affordable electricity, please feel free to copy and share with them all or part of this newsletter, or you can call 608/286-0784 to arrange an informational meeting.

**Customers First!**  
Plugging Wisconsin In

