

# Facilitate Electricity Competition

A fully responsive electricity industry would use active demand and distributed generation to better meet customer needs. Digital technologies and flexible pricing can enable consumers, rather than producers, to make decisions about supply. Laws that restrict this flexibility in the name of fairness increase the power of suppliers at the expense of consumers and contribute to energy waste.

Congress must deregulate not just the flows—generation—but the grid itself. It should guard against a knee-jerk defense of either the utilities’ “go slow” position or that of large industrial power users who demand forced open access to (somebody else’s) grid. As in the “net neutrality” debate, mandatory access to the power grid is being sold as a model of liberalization, though it is far from that. Forced open access to the grid, by further institutionalizing central price and entry regulation, will actually delay the genuine competition that would emerge if reformers would instead target the government-granted exclusive franchises that utilities currently enjoy.

Properly, new electric generators do not have a “right” to force existing utilities to transport their power to customers, only the right to figure out how to do it themselves. At the same time, states have no legitimate authority to prevent electricity customers within their borders from purchasing power from one of those competi-

tive generators, *if the generator or someone else is willing to transport that power voluntarily.*

If incumbent utilities do not offer competitive service—which is certainly their right—then others must be free to provide competitive delivery if they can figure out a way. Recognizing and affirming property rights of utilities to subsurface and overhead rights-of-way could vastly expand competitive processes and lead to innovative cross-sectoral delivery methods. Cross-industry consortia could exploit the many rights of way to existing consumers. New entrants would find it much easier to lay their lines and compete with existing providers. Yet the states generally do not permit delivery competition.

There is no state “right” to violate the rights of individuals who attempt to execute voluntary trades. Thus, reformers can unite around the Commerce Clause’s injunction against states erecting artificial barriers to competition, a position that is consistent with federalism. Federal action—but not forced access legislation—will be needed in those instances in which states remain in the business of restraining voluntary trade through the continued use of the exclusive franchise. Federal action should *not* be used to induce *involuntary* trade, which is the essence of forced access.

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