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NOTE TO READERS

ON-LINE DELIVERY

This issue begins the bi-monthly electronic delivery of *FSC's Law and Economics Insights*. In addition, previous issues of the newsletter can obtained at FSC's World Wide Web site:

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CURRENT PROJECTS

MEASURING ELECTRIC COMPETITION IMPACTS

The United States is undergoing the "restructuring" of the electric power industry today. Most proposals for electric restructuring involve proposals to allow for retail competition. While these proposals come under many names, they all mean basically the same thing: consumers would no longer be obliged to purchase their power from the local electric utility company. Instead, just as in the telecommunications industry, consumers could shop from amongst all of the various companies offering electricity for sale and decide to buy from whomever they choose.

Will low-income consumers be "better off" or "worse off" as a result of restructuring the electric industry? The answer to that question will form the basis for a wide range of public policy decisions for years to come.

- Is there a need for special procedures to help low-income consumers remain connected to the electric grid?
- Is there a need for additional state or federal funding for low-income affordability assistance?
- Is there a need for special assistance to help low-income consumers effectively participate in the competitive market through aggregation?
- Is there a need for special low-income price protections?

Irrespective of what predictions analysts make, they remain nonetheless just predictions. As a result, the U.S. Department of Health and Human Services, Administration for Children and Families, retained FSC to develop a set of indicators through which to *measure* the impacts of electric restructuring on low-income consumers as restructuring unfolds. The purposes of the FSC work were four-fold:

1. To identify, define and explain a set of quantifiable indicators to use in tracking how restructuring the electric industry affects low-income consumers;

2. To propose a set of specific data through which these indicators can be measured (both currently and at periodic intervals into the future);

3. To suggest a methodology for collecting the proposed data; and

4. To explain the use to which the performance measures can be put.

The final FSC report, titled *Monitoring the Impact of Electric Restructuring on Low-Income Consumers: The What, How and Why of Data Collection*, presents three objectives and 14 indicators on how to measure the impacts that electric (and natural gas) restructuring might have on low-income consumers. In addition to proposed data collection, the FSC report presents suggested legislative language authorizing and requiring such data collection.

FSC's final report can be obtained by writing National Energy Assistance Directors' Association, P.O. Box 42655, Washington D.C. 20015-0655 or by calling NEADA at 202-237-5199. This document will also be available on the Division of Energy Assistance's web site at: http://www.acf.dhhs.gov/programs/liheap/perform.htm

CONTROLLING THE OCCUPATIONAL EXPOSURE OF HOMELESS SHELTER WORKERS TO TUBERCULOSIS

The U.S. Occupational Safety and Health Administration published its empirical evaluation of the impact of proposed regulations to control the occupational exposure of homeless shelter workers to tuberculosis. Prepared by FSC in collaboration with the Minnesota firm Lenhardt & Colton (LLC), the June 1999 homeless shelter study evaluated current homeless shelter practices for controlling the exposure of homeless workers to the occupational risk of tuberculosis based on site visits to nine homeless shelters. The study examined several issues, including:

- Defining attributes of the homeless population and the shelters which serve them.

- Defining the attributes of the work that occurs within homeless shelters.

- Identifying current practices with respect to TB in homeless shelters, along with past experience with TB.

- Assessing the operational characteristics of homeless shelters, including the extent to which homeless shelters currently voluntarily follow any portions of OSHA's proposed regulation;

- Assessing the economic characteristic of homeless shelters, including: (1) the costs of running a shelter; (2) revenue sources; (3) how costs are accommodated as the number of homeless persons served increases; and (4) opportunities for cost pass-through.

FSC's report to OSHA, titled *Final Report on Site Visits to Nine Homeless Shelters* can be obtained by FAXing a request to Dockets Office, OSHA, at 202-693-1648 (asking for Exhibit 179-1, Docket H-371) or by calling the Dockets Office at 202-693-2350.

MERGER OF FLEET FINANCIAL GROUP AND BANK BOSTON

One question presented to federal regulators by the proposed merger of Fleet Financial Group and BankBoston Corporation is whether the merged bank will adequately address the credit needs of the community. According to testimony presented to the Federal Reserve Board (FRB) on behalf of the Belmont (MA) Fair Housing Committee, in assessing whether this will occur, there is a need to differentiate between the urban and the suburban communities. According to FSC, "one of the next major steps that must occur in community development and fair housing is to facilitate the diversification of suburban communities."

FSC presented the FRB with an analysis of ten Boston suburbs (Belmont, Waltham, Lexington, Woburn, Winchester, Arlington, Bedford, Burlington, Sudbury, Concord).

Socio-economic diversity: The analysis documented that the first major credit need in the suburban community involves the promotion of socio-economic diversity. One lesson found in the available data is that the affordability of units is not the only barrier to homeownership in the ten communities studied. Homeownership is unavailable even when affordable homeownership opportunities exist. Information was obtained for each of the study communities on the number of units that are affordable at different levels of median income. This community-specific data shows, FSC told the Federal Reserve Board, that even aside from the lack of available affordable units, even those affordable homeownership units that *are* available are not occupied by households with lower incomes.

It is often asserted, FSC told the FRB, that Boston's suburban community lacks a greater socio-economic diversity because of the lack of affordable housing. The data confirmed that this is frequently the case. The data further showed, however, that even when and where affordable homeownership units exist, they are not being purchased by households at lower incomes. To meet the needs of diversifying the suburbs, the need is more than simply to "avoid discrimination."

Racial-ethnic diversity: The second major credit need in the suburban community, FSC told the FRB, involves the promotion of racial and ethnic diversification. The data from the ten study communities, FSC said, show a lack of diversification even when controlling for income. Merely because units may be affordable to households of color does not mean that households of color are becoming homeowners in these suburban communities.

The lack of racial and ethnic diversity in the ten study communities cannot be attributed exclusively to the lack of affordable housing availability. Throughout the ten communities, FSC found, the number of total African-American homeowners with incomes at or above 80% of median income is consistently less than one percent of the total number of homeownership units affordable at those levels. The performance is nearly identical relative to Hispanic homeowners at that income level.

By definition, the price of housing is not the limiting factor in this analysis. The data was limited to housing determined to be affordable at 80% of median income or more with which to begin. The data was also limited to African-American and Hispanic households who have incomes of at least that amount. Something more than the mere unaffordability of homeownership is creating barriers to suburban homeownership for households of color.

Based on this analysis, FSC recommended that the FRB impose fair lending conditions on any approval of a merger between Fleet Financial Services and Bank Boston. FSC said that it would be appropriate for a FleetBoston to commit to working with the greater Boston fair housing community to develop, by the end of Calendar Year 2000, a Plan of Action to promote the diversification of the suburbs. This Plan would include a stated goal; supported by quantifiable, verifiable short-term and long-term objectives; a written work plan in furtherance of accomplishing the objectives; an evaluation mechanism to determine performance relative to the stated objectives; and a review mechanism charged with utilizing the evaluation to formulate recommendations on modifications, as needed, to the Plan of Action should the objectives not be achieved.

The July 1999 FSC analysis, titled *Fair Housing in the Suburbs: The Role of a Merged Fleet Boston in The Diversification of the Suburbs: Report to the Federal Reserve Board Concerning the Merger of BankBoston Corp. and Fleet Financial Group,* can be obtained by writing FSC's Belmont office or by sending an e-mail to: publications@fsconline.com.

NEW JERSEY GAS RESTRUCTURING

One of the fundamental goals of a move to retail choice in the natural gas industry in New Jersey is to provide benefits to *all* consumers in the state. In testimony filed on behalf of the New Jersey Division of Ratepayer Advocate, FSC said that New Jersey is not well served if discrete sets of consumers are disadvantaged so that other consumers may benefit from lower competitive rates.

In making sure this happens, FSC said, the future well-being of low-income consumers cannot be left exclusively to "the market." That does not mean that New Jersey should not move to retail choice, FSC said. It does mean, however, that each component of restructuring should be reviewed to see whether it indeed generates benefits for all customers, or whether it needs to be implemented with a specific view toward assuring that the benefits of competition will arise, also, to low-income customers.

New Jersey's retail choice legislation specifically provides for the creation of a Universal Service Fund. The legislation provides that the Board shall determine:

- the level of funding;
- the appropriate administration;
- the purposes and programs to be funded with monies from the fund;
- which programs should be provided as part of the provision of regulated services which provide a public benefit;
- whether certain designated funds should be deposited in the fund; and
- whether new charges should be imposed to fund new or expanded social programs.

The legislation is mandatory in nature, FSC noted. The Universal Service Fund is "established" not merely authorized. The Fund is made "nonlapsing." The Board's tasks are stated as mandatory obligations.

In its program design for the Ratepayer Advocate, FSC said that serving low-income customers in New Jersey should include the following three substantive components: (1) affordable rate assistance; (2) crisis intervention assistance; and (3) energy efficiency assistance. In addition, of course, there will need to be some provision for program administrative costs.

FSC's testimony for the Ratepayer Advocate recommended that the Board create a natural gas Universal Service Fund. The total statewide budget for such a fund should be $30.8 million. This should be comprised of four components: (1) $21.0 million for affordable rate assistance; (2) $1.3 million for crisis intervention assistance; (3) $5.7 million for energy efficiency assistance; and (4) $2.8 million for administrative expenses.

The total low-income universal service program, FSC said, would thus represent 1.1% of retail revenues. This places a New Jersey natural gas universal service program in the middle of the range of universal service societal benefits charges around the nation.

PUBLICATIONS:

EVALUATING MOBILE HOME FEES

Mobile home owners have long been subject to unfair and oppressive tactics engaged in by the owners and operators of mobile home parks. As a result, state legislatures have adopted a variety of statutes, one of the most important of which involves prohibiting the imposition of "service fees" or "entrance fees" on new park residents.

A recent article written by FSC introduces the law designed to control such fees, and explains one approach to analyzing whether the justification underlying a particular fee makes that fee subject to challenge.

According to the article, state statutes restricting mobile home park "entrance fees" (sometimes also known as "service fees" or "transfer fees") prohibit the imposition of a fee upon a person seeking to rent a home park lot unless a specific "service" is rendered in conjunction with the fee. Concerns arise when mobile home park fees are imposed which are unrelated to the level of service rendered.

The courts have identified a variety of factors to determine whether a mobile home park fee is an unlawful service fee or transfer fee. These factors include:

1. Whether the defendant performs little or no services in connection with the transfer;

2. Whether the fee represents an unconscionably disproportionate price for the services rendered;

3. Whether tenants are in a position in which they have no reasonable alternative but to pay and to agree to pay;

4. Whether the park collects the fee irrespective of whether services are rendered;

5. Whether the services that are provided are, at most, ordinary, routine services which are rendered to all tenants;

6. Whether the services that are provided represent work which, of necessity, is performed for all tenants or prospective tenants;

7. Whether, in contrast, the services that are provided represent services which are not ordinarily or usually rendered; and

8. Whether there is evidence of any special services performed by management.

In response to these consumer protection statutes, and the litigation to enforce them, mobile home park operators have begun to present long laundry lists of tasks which they say satisfy the "service" requirements of the statutes. The article posits that the "process model of business" can help advocates to assess whether (and what) tasks represent services subject to compensation, and whether the fees are appropriately imposed on the "customer" to whom a service is delivered. In so doing, the process model of business provides a principled mechanism for evaluating, and challenging, unfair mobile home park transfer fees.

The article, "Challenging Entrance and Transfer Fees in Mobile Home Park Lot Rentals," can be found in the July/August 1999 issue of the *Clearinghouse Review*, the journal published by the National Center on Poverty Law (Chicago).

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