COMMENTS BY BARBARA R. ALEXANDER, MAINE PUBLIC ADVOCATE

SUIS CREDIT DRAFT 5: TO BE CONSIDERED 2/25/03 IN NEWARK, NJ

PRINCIPLES:

Overall comment: These principles should be stated as assumptions that guided the participants in the development of the proposed business practices. They should not attempt to state policy preferences. If presented as a set of assumptions, it should be made clear that if a jurisdiction has adopted policies that would result in different assumptions, the business practices may not be applicable.

DEFINITIONS:

Billing Party: why is this definition stated in terms of Consolidated Billing only? This definition should reflect a "billing method neutral" meaning.

Consolidated Billing: define same as Billing and Payments business practices or defer to that document for definition.

Default Provider: Delete the example and defer to Applicable Regulatory Authority for who provides and under what circumstances. Proposed: "The provider of energy supply service to Customers who are not being served by a competitive energy Supplier. This service is provided pursuant to the rules and policies established by the A.R.A."

Distribution company: delete the reference to "provide generation services" (covered under Default Provider).

Application Form: do you want to limit this to application for credit or include the application that the supplier presents to the distribution company to do business with retail customers—whether or not credit may be involved?

Governing Documents: include a reference to Billing Services Agreement and Supplier Tariff.

Material Change: the focus on bond rating changes alone is much too narrow. This definition should reflect a wide range of changes/events that would adversely impact an entity's financial condition (compared to the original application).

Periodic Reconsideration: do not specify "annual" but refer to Governing Documents.

Confidential Information: the key here is "nonpublic financial information". Does this refer to information that is legally withheld from the public? From a government agency that has licensed both the Creditor and Applicant? Who is the "public"? SEC? A.R.A.? Do you mean

to limit this to "financial" information? What about personnel matters? Enforcement investigations underway? Items that must be reported in SEC quarterly 10K filings?

MODEL BUSINESS PRACTICES:

1.3.1.1 Scope: I would like to raise the issue of whether these business practices should address "risks associated with being the Default Provider"? In most states, the procedures concerning billing and collection are handled very separately from the policies and procedures associated with becoming the Default Provider (e.g., compare the Supplier Tariff re consolidated billing in PA with the extensive and quite separate set of requirements with serving as Default Provider in the PECO Energy competitive default service program.) The risks associated with Default Provider are so different and a much larger scale than for billing. I recommend that the SUIS consider deleting this matter from this round of business practices because as currently drafted the document does not reflect these special concerns.

Calling on Security:

1.6.3.1 – 1.6.3.5 I think that the proposed business practice should not define what a default is (failure to pay) because the concept of default is bigger than just failure to pay. Nor should it outline all the events that must proceed calling on the security. These should be defined specifically in the credit agreement and perhaps the Model Practice should be to require that the parties clearly define these events. What does "calling" mean in this context? Define.

Proposed: Upon a default by a party to a credit agreement (as defined in the credit agreement), the nondefaulting party should notify the other party and initiate any "notice and cure" provision that is required by the agreement. Following the expiration of any applicable notice and cure provision, the nondefaulting party may initiate the process of calling on a security instrument.

Do you want to develop a "model" notice of default and cure? A "model" notice of how to call on a security instrument?

Can these notices be provided electronically? What does "written" mean in this context? Registered mail? Fed Ex package?

Delete 1.6.3.2 and 1.6.3.3 re calling on security without notice—these criteria and eventualities should be set forth in credit agreement, but to propose such a substantive provision in these Business Practices is probably too controversial.

Delete 1.6.3.4: Normally when a Supplier ceases business, it must also comply with regulatory "abandonment" requirements and notices to its customers, etc. In this context, what does "ceasing service" to customers mean? Stop billing? Abandon license? I suggest that this practice focus on the defined default provisions in the credit agreement between the supplier and

utility, which is already covered in proposed 1.6.3.1, above. Why would you want to delay for 30 days anyway?

Delete 1.6.3.5: These business practices should not address what the creditor does with the security in terms of posting to customer accounts. This security represents funds owed by supplier to utility (or vice versa) and should not address the implications for retail customer accounts.

Confidentiality:

1.7.3.1: I don't understand this proposed practice. The "creditor" and "applicant" have presumably already entered into an agreement to allow the supplier to provide service to retail customers pursuant to A.R.A.-issued licenses and approval of Supplier Tariffs. Of course the "applicant names" are public information! The entire relationship is public. What I think you want to do to set forth the specific type of information that the Creditor must protect as confidential in the context of a credit agreement only, i.e., the information that the applicant will provide to the creditor to establish credit and make sure that the language is not misinterpreted to refer to the "doing business" relationship that may not involve a credit evaluation.

A proper type of business practice would be to develop the procedures that an entity should adopt to assure confidentiality of certain information. This is not here.

Note: any agreement between the Creditor and Applicant should be reflected in the Supplier Tariff or subject to approval by A.R.A.

Disqualification/Remedies:

I can't tell if you have deleted this section or if you just have not gotten to it yet. If the latter, I object to any description of remedies or actions that a Creditor can take that affects the retail customers of the Applicant. These actions are subject to policies and procedures adopted by A.R.A. and can only be taken with approval of the A.R.A. in most cases or under its supervision with notice to customers, etc.