



NUCLEAR ENERGY INSTITUTE

**Marvin S. Fertel**

SENIOR VICE PRESIDENT  
BUSINESS OPERATIONS

**BY HAND**

April 3, 2001

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

ATTN: Donald S. Clark  
Office of the Secretary

RE: Notice Requesting Comments on Retail Electricity Competition Plans

Dear Mr. Clark:

On behalf of the nuclear energy industry, the Nuclear Energy Institute (NEI)<sup>1</sup> appreciates the opportunity to comment on Retail Electricity Competition Plans to provide the Federal Trade Commission with information on issues arising in retail competition that are of specific interest to the nuclear industry.

The 103 nuclear electricity plants currently operating supply 20% of our nation's electricity with no emissions of criteria pollutants or greenhouse gases. Unfortunately, political rhetoric about speculative impacts on the environment from nuclear plant operations has become a common basis for public assertions about nuclear electricity products.

Whether privately sponsored, or the result of government imposed disclosure requirements, inaccurate information about nuclear electricity's impacts to the environment can unfairly undermine its success in open markets created by restructuring. This can lead to trade and commerce implications beyond the nuclear industry itself. The western portion of the United States is facing severe electricity shortages that are

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<sup>1</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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impairing the economy regionwide. During the 1990s, functioning nuclear assets were closed due to local political issues and the perception that they could not compete with other forms of electricity.

Replacement generation for these baseload facilities, to the extent it was built, now tax California's already problematic air quality. By using nuclear energy instead of the available baseload alternatives, millions of tons of sulfur dioxide, nitrogen oxide, and carbon dioxide emissions are avoided annually. In addition, used nuclear fuel and other radioactive material is carefully managed and stored so as to prevent adverse impacts to human health and the environment. Nuclear plants occupy small amounts of land, and provide wildlife habitat and sanctuary within the plant confines. Overall, the pollution prevention and mitigation measures in place at nuclear electricity plants successfully prevent significant harm to human health and the environment.

NEI believes the FTC can play a vital role in ensuring that consumer protection activities are not misused or manipulated to achieve political goals. Not only does this create inequities in the market, misleading information can lead consumers to make choices that imperil adequate electricity supply. NEI offers the following comments and recommendations regarding consumer protection issues for your consideration in evaluating restructuring programs carried out to date.

#### **A. Information Disclosure**

Several states adopting retail competition statutes have included provisions in those laws requiring electricity providers to disclose the type of generation used and several categories of information related to emissions, discharges or other waste streams created in the generation process. The labels used to date present three problems:

- (1) Many generation sources produce by-product material that is not emitted or discharged into the environment, but rather is managed in accordance with regulatory requirements that prevent its introduction into any environmental medium. Nonetheless, many labeling laws require disclosure of this material or wastes in a manner that implies it enters the environment and causes an impact in a manner similar to the other materials listed.

For example, the proposed disclosure and labeling rule for Montana (Attachment A) lists used nuclear fuel (which does not enter the environment) as an "impact" that must be disclosed along with carbon dioxide, sulfur dioxide (SO<sub>2</sub>), and nitrogen oxide (NO<sub>x</sub>), all of which are uncontrolled emissions into the air, (Attachment A, p.7). NEI believes that byproduct materials or emissions managed in accordance with statutory requirements that prevent releases and avoid or

mitigate adverse environmental impacts should not be subject to mandatory disclosure requirements that imply that the controlled byproducts are having a negative effect.

- (2) Label information is presented in an unexplained or misleading quantitative form that can create the impression that a significant adverse impact is occurring.

The Montana proposed rule again provides an illustration of this problem. Carbon dioxide, SO<sub>2</sub>, and NO<sub>x</sub> emissions are all identified in pounds per kilowatt. (Attachment A, p.7) Used nuclear fuel, however, is measured in milligrams per kilowatt. A milligram is one millionth of a kilogram (a kilogram being 2.2 pounds)—measurement distinctions not likely to be obvious to the average consumer. Yet by changing the unit of measure, the label can create the false impression that a very large volume of “impact” is occurring. As stated above, NEI does not believe material, such as used fuel, that never enters the environment should be the subject of disclosure requirements. However, if and where these by-products are disclosed, the units of measure should not be arbitrarily reduced in relation to other disclosed material so as to potentially mislead or confuse consumers as to the true nature of the environmental impact at issue.

- (3) Information regarding all categories of environmental impact resulting from electricity production (land and habitat incursion, protected species mortality, noise, visual blight) should be included in labels, not just a select few on the basis of political preferences.

All forms of electricity production can have adverse environmental impacts. Where only a few environmental indicators or impacts are singled out in a label, consumers can develop the false impression or belief that electricity products derived from other fuels or processes do not have adverse environmental impacts, when in fact they do. Discriminating among impacts disclosed can unfairly characterize particular fuel processes as being more or less environmentally acceptable to consumers, and undermine the market potential of certain fuels to the benefit of others. NEI believes that labeling requirements should ensure that all forms of generation must equally disclose attributes that harm the environment to ensure the public is making an informed choice.

In summary, NEI believes that the FTC should review restructuring programs to ensure that disclosure and labeling requirements regarding all forms of adverse impacts to the environment from electricity production meet the following principles:

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- ◆ The data presented is based upon credible evidence demonstrating that a discharge, impairment, release, emission, or depletion has occurred, resulting in an adverse impact on the environment.
- ◆ Label contents must be presented in a neutral, consistent manner such that information either included or omitted does not mislead consumers as to the actual environmental impacts occurring from all available generation sources.
- ◆ Disclosure of information for use by consumers regarding a generation source shall not be required for byproduct or waste material managed in accordance with statutory requirements that prevent uncontrolled introduction into the environment.

### **Environmental Product Advertising and Certification**

Many public perceptions or assumptions about the environmental attributes of generation sources or fuels stem from claims or assertions developed by opponents of those technologies that largely reflect political rhetoric, not fact. Spent fuel management by the commercial nuclear industry is a case in point.

Competitors of nuclear electricity producers will often assert that spent fuel from nuclear power generation is an intractable problem that is having, and will continue to have, a deleterious effect on the environment. In fact, spent nuclear fuel has always been managed in accordance with what are now universally recognized principles for effective cradle-to-grave practices to prevent adverse environmental impacts. Used nuclear fuel is contained in an engineered, multiple barrier system. Used fuel currently remains safely stored at plant sites under strict containment conditions, with no environmental impacts. Ultimately, the material will be placed in a licensed disposal facility. Effective minimization and management practices that focus on the scientific principles of concentration and containment prevent adverse impacts on water, land, habitat, species, and air from nuclear waste created in the generation of electricity.

Yet, the negative rhetoric regarding *potential* and speculative adverse impacts has already made its way into the electricity marketplace through various certification or consumer information programs ostensibly designed to provide neutral information (e.g., <http://www.powerscorecard.org>). These information programs are direct marketing materials aimed at consumers in competitive markets.

NEI believes that alleged negative attributes or impacts of a competing generation source cannot be the basis for negative marketing claims or electricity product assessment unless such claims are independently substantiated using objective, scientifically based evidence. The FTC should take special care to ensure that organizations claiming to assist consumers in retail electricity choice are held to the proper standards of

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substantiation before placing potentially damaging information in the public domain. Advertising or informational claims designed to undermine an electricity product should be subject to very strict scrutiny since it is often difficult to “unring the bell,” once the claims have been placed in the stream of commerce.

Thank you again for the opportunity to provide these comments. Please do not hesitate to contact NEI at (202) 739-8000 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marvin S. Fertel".

Marvin S. Fertel

Attachment

(located at [www.puc.state.or.us/erestruc/miscmnt/mtdisclo.pdf](http://www.puc.state.or.us/erestruc/miscmnt/mtdisclo.pdf))

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the Matter of the Proposed ) NOTICE OF PUBLIC HEARING  
Adoption and Amendment of ) ON THE PROPOSED ADOPTION  
Rules Implementing Title 69, ) AND AMENDMENT OF DISCLOSURE  
Chapter 8 (MCA), (Electric ) AND LABELING RULES  
Utility Industry Restructuring )  
and Customer Choice Act) )  
Pertaining to Disclosure and )  
Labeling to Inform Customers on )  
Electricity Supply Service )

TO: All Concerned Persons

1. On Monday, December 20, 1999 at 10:30 a.m. a public hearing will be held in the Bollinger Room, Public Service Commission (Commission) offices, 1701 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of rules on disclosure and labeling of electricity supply and electricity supply service.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on December 13, 1999 to advise us of the nature of the accommodation that you need. Please contact Kathy Anderson, Commission Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406)444-6170, TTD number 406-444-6199, fax number (406)444-7618.

3. The rules proposed for adoption provide as follows:

RULE I. DEFINITIONS (1) "Biomass" means an electric power source derived from combustible residues or gasses from logging, forest products manufacturing, agricultural and orchard crops, black pulping liquor, waste products from livestock and poultry operations and food processing, urban wood waste, municipal liquid waste treatment operations, and landfill gas.

(2) "Claim" or "claims-based sale" means a claim made to customers by a retail supplier for the purpose of marketing any electricity product that identifies any of a retail supplier's electricity sources as different from net system

power or a claim that a sale is based on or related to one or more specific purchases or power supplies and that contains either:

(a) a reference to the type of fuel used to generate the electricity product offered for sale by the retail supplier, other than disclosure of net system power;

(b) a reference, directly or indirectly, to use of a renewable resource to generate, in part or in whole, the electricity product offered for sale by the retail supplier, other than disclosure of net system power; or

(c) a statement that either a specific attribute of the electricity product or of its use creates or is associated with an environmental effect.

(3) "Coal" means a power source from burning coal or coal wastes.

(4) "Disclosure" means disclosure to the end-use customer in accordance with these rules.

(5) "Electricity product" means the electrical energy produced by a generating facility that a retail seller offers to sell or sells to customers in this state under terms and conditions specific to an offer or to a tariff. It does not include the provision of electric services on-site at the retail customer's premises.

(6) "Fuel mix" means the actual or imputable sources of electricity sold at retail, expressed in terms of percentage contributions by the various fuels or technologies (such as coal or solar) used to generate electricity. The total fuel mix included in each disclosure must total one hundred percent.

(7) "Geothermal" means an electric power source derived from thermal energy naturally produced within the earth.

(8) "Hydro" means a power source created when water flows from a higher elevation to a lower elevation and such flow is converted to electrical energy in one or more generators at a single facility.

(9) "Low-impact hydro" means hydroelectric generation sources that have low environmental impact.

(10) "Natural gas" means a power source from burning natural gas, ethane or propane.

(11) "Net system power" means the sum of all power generation within the United States portion of the northwest power pool less all specific purchases from generation facilities within the northwest power pool. Net system power is assigned the average residual fuel source and environmental impact characteristics of all generation within the northwest power pool area, less all specific purchases, as determined in accordance with the memorandum of understanding on electricity

generation reporting procedures within the western interconnection executed by and between the regulatory agencies of states located within the geographic boundaries of the western systems coordinating council.

(12) "Nuclear" means a power source from nuclear fission or fusion.

(13) "Other" means a power source other than a renewable, coal, hydro, natural gas, or nuclear source. Each type of "other" should be specifically listed if it constitutes more than one and one-half percent of total sources.

(14) "Promotional materials" means any paper, electronic, or other media distributed to customers that contain words pertaining to a specific electricity or gas product being advertised, offered, or contracted for and that are distributed to customers, including advertisements and notices in general circulation media.

(15) "Renewable" means a technology other than a conventional power source that uses biomass, geothermal, low impact hydro, solar, or wind as the source of electrical generation.

(16) "Retail supplier" or "retail seller" means an entity that offers an electricity product for sale to retail customers in the state.

(17) "Solar" means an electric power source that is derived from radiation from the sun that is directly or indirectly converted to electrical energy.

(18) "Specific purchase" means:

(a) a transaction claimed by a retail supplier to document the source of supply, consisting of the purchase of a stated quantity of electricity, directly or indirectly, from a specified generation facility; or

(b) purchase of the right to trace a stated quantity of electricity to generation of an equal amount by a specified generation facility.

(19) "Uniform information label" means the prescribed format for disclosure of information under this rule to small customers.

(20) "Wind" means an electric power source created by movement of air that is converted to electrical energy.

AUTH: 69-8-403, MCA

IMP: 69-8-102, MCA

## RULE II. ELECTRICITY PRODUCT SPECIFIC DISCLOSURE

(1) In connection with any sale or offer for sale of any electricity product, the retail supplier must provide the following information to the customer:

(a) the price of electricity as required by [RULE III];  
(b) the generation source by fuel type as required by [RULE IV]; and

(c) the environmental impacts for the electricity product offered for sale, as required by [RULE V].

(2) Each retail supplier must disclose the information required in this rule to electricity customers as follows:

(a) Disclosure to small customers in the form of a uniform information label in the format located on the commission's web site must be provided to each customer at the time of an offer for sale along with the terms of service. Thereafter, the disclosure must be provided semi-annually at a minimum;

(b) Product specific advertising appearing in newspapers and magazines must include a condensed label disclosing source of power and average generation price for newspaper ads quarter page or larger and full-page magazine ads unless the majority of customers in the affected area have already received direct mail on the products; and

(c) Product specific advertising appearing in newspapers and magazines must include an 800 number box for:

(i) newspaper ads quarter page or larger and full-page magazine ads that were subject to the exception contained in (2)(b); and

(ii) newspaper ads smaller than quarter page or magazine ads less than full a page.

(3) Disclosure of the information to large commercial, industrial and other customers not included within the definition of small customers must be provided to the customer at the time of sale and annually thereafter. For purposes of this rule, sales to aggregated accounts of small commercial customers collectively using 50 thousand kilowatt-hours or more of electricity each month of the year must be treated as sales to large commercial and industrial customers.

AUTH: 69-8-403, MCA

IMP: 69-8-102, MCA

### RULE III. ELECTRICITY PRICE AND CONTRACT DISCLOSURE

(1) Disclosure for small customers must include electricity price per kilowatt-hour and contract information in accordance with this rule.

(2) The price of the electricity product without reflecting any adjustments for nonrecurring cash or non-cash inducements must be disclosed as the effective price of electricity supply service in cents per kilowatt-hour for the

following specified levels of consumption typical for the customer segment:

(a) For residential customers, the price per kilowatt-hour for usage amounts of 250, 500, 1000 and 2000 kilowatt-hours per month; and

(b) For small commercial customers, the price per kilowatt-hour for usage amounts of 1,000, 10,000 and 30,000 kilowatt-hours per month. For small commercial customers with a demand meter, the demand charges for peak demands of 8, 40, and 100 kilowatt-hours associated with each level must be disclosed. With commission approval, other usage levels based on representative percentages of a particular class size may be substituted for the levels specified above.

(3) Retail suppliers offering electricity on a spot market or other variable price basis must disclose prices as follows:

(a) Prices per kilowatt-hour for typical usage levels must reflect the price calculated over the most recent calendar year based on a single, generic load profile for each customer class; and

(b) This statement must be printed below the average bill portion of the label: "Your actual price will depend on future market conditions and could be substantially higher or lower than the prices reflected here that are based on historical market conditions. Your bill amount is not [is] capped if prices rise. See your service contract for exact pricing and historic price information."

(4) The uniform information label must also include:

(a) a "contract" section which will specify the length of time the contract will be in effect;

(b) whether the price is fixed or variable;

(c) the toll-free telephone number for customer inquiries; and

(d) the hours during which the customer can contact the supplier at that number.

AUTH: 69-8-403, MCA

IMP: 69-8-102, MCA

#### RULE IV. ELECTRICITY PRODUCT FUEL MIX DISCLOSURE

(1) Disclosure must specify the fuel mix of the electricity product sold in accordance with this rule.

(2) Each retail supplier must disclose to customers the fuel mix of each electricity product offered as follows:

(a) A retail supplier making a claim of specific purchases or a claims-based sale must:

(i) disclose the projected fuel mix for the electricity product for the current calendar year; or

(ii) include for comparison the fuel mix for net system power based on the previous calendar year.

(b) A retail supplier supplying electricity without any claims of specific purchases and making sales that are not claims-based sales must:

(i) disclose the fuel mix for the electricity product as the fuel mix for net system power based on the previous calendar year; and

(ii) include a subheading below the fuel mix disclosure stating: "The electricity sold under this label is supplied from whatever electricity supply is available. The fuel mix shown above is based on the supply available over a recent twelve-month period."

(3) The disclosure must include the following information about the fuel mix of the electricity product:

(a) Fuel mix information must be provided as percentages of the total product supply for the electricity product using the following fuel type categories in the following order:

(i) Renewable;

(ii) Coal;

(iii) Hydro (non low-impact);

(iv) Natural gas;

(v) Nuclear; and

(vi) Other (specify for types over one and one-half percent).

(b) The retail supplier may include the following sub-categories within the renewable category, but is not required to display the fuel mix percentages for these sub-categories:

(i) Biomass;

(ii) Geothermal;

(iii) Low-impact hydro;

(iv) Solar; and

(v) Wind.

(4) The percentage of each specified fuel type category or sub-category must be calculated based on weighted contribution in kilowatt-hours supplied from that fuel mix category over the relevant period. The sum of the categories must total one hundred percent.

AUTH: 69-8-403, MCA

IMP: 69-8-102, MCA

RULE V. ENVIRONMENTAL IMPACT DISCLOSURE (1) Disclosure must specify the environmental impacts of the electricity product sold in accordance with this rule.

(2) Each retail supplier must disclose in the form of a bar chart the environmental impacts from generation of the electricity product sold, as compared to the respective levels (regional average levels) of such impacts from all electricity generation in the region encompassed by net system supply. The bar chart must reflect separate horizontal bars for each of the following environmental impacts:

- (a) Carbon dioxide;
- (b) Sulfur dioxide;
- (c) Nitrogen oxides;
- (d) Spent nuclear fuel; and
- (e) Hydro impact.

(3) The bar chart must contain a vertical line across the bar chart, which represents the regional average level of each impact from all electricity generation in the region encompassed by net system supply. For each impact the horizontal bar must measure the greater or lesser percentage of that impact from the electricity product sold as compared to the regional average level represented by the vertical line. For each impact, the percentage of impact from the specified electricity product as compared to the regional average must be computed using the following rate measurements:

- (a) Carbon dioxide, measured in lbs/kWh of carbon dioxide emissions;
- (b) Sulfur dioxide, measured in lbs/kWh of sulfur dioxide emissions;
- (c) Nitrogen oxides, measured in lbs/kWh of nitrogen oxide emissions;
- (d) Spent nuclear fuel, measured in mg/kWh of spent fuel; and
- (e) Hydro impact, as percentage of non low-impact hydro in the fuel mix.

(4) A retail supplier making a claim of specific purchases or a claims-based sale must compute the impacts based on the annual emission factors for the most recent calendar year applied to the expected production level for each source of supply included in the electricity product.

(5) A retail supplier supplying some or all electricity without any claims of specific purchases and making sales that are not claims-based sales must include for that portion of supply the environmental impacts for net system power based on the previous calendar year, with a subheading below the disclosure stating: "\_\_\_ percent of the electricity sold under this label is supplied from whatever electricity supply is available. The environmental impact levels shown above are based on the supply available over a recent twelve-month period."

(6) A retail supplier must include in the terms of service an explanation of environmental impacts in the form prescribed by the commission.

AUTH: 69-8-403, MCA

IMP: 69-8-102, MCA

4. The rule proposed for amendment provides as follows:

38.5.6004 SMALL CUSTOMER SERVICE CONTRACT (1) All rates, terms and conditions for supply service must be provided to a small customer in a service contract, written in plain language. The service contract must include the letter of authorization required by ARM 38.5.6002 and the letter of authorization must be returned by the customer to the supplier before any supply service is provided. The front page of a service contract shall prominently and clearly disclose a uniform information label prescribed by the commission in conformance with [RULES I through V] for electricity supply and as available on the commission's internet website for both electricity and gas supply. For gas supply service the uniform information label must specify:

(a) remains the same.

(b) the effective price for gas supply service, in cents per kilowatt hour for electricity or, for gas, stated as price per either dekatherm or mcf, whichever billing unit is used by the distribution services provider, for various specified levels of consumption typical for the customer's customer segment;

(c) and (d) remain the same.

(2) through (10) remain the same.

AUTH: 69-3-1404 and 69-8-403, MCA

IMP: 69-3-1404, 69-8-102 and 69-8-403, MCA

5. Rationale: Senate Bill 390 (1997) ("Electric Utility Industry Restructuring and Customer Choice Act," codified at Title 69, Chapter 8, MCA) requires the Commission to promulgate rules as necessary to carry out the provisions of the chapter, including informing customers regarding electricity supply service. The Committee on Regional Electric Power Cooperation (CREPC) and the Western Conference of Public Service Commissioners initiated a regional Consumer Information Disclosure Project to develop a Model Rule to promote as much regional consistency as possible. Assisted by the National Council on Competition and the Electric Industry, the joint effort resulted in Version 2.5, Model Rule on Consumer Disclosure in Connection with Electricity Sales. Customers can make more informed choices more quickly when

presented with consistent formats and standard definitions for comparison of products. The Model Rule includes provisions covering price, price variability, fuel source, and environmental impacts. The Model Rule is a source document providing a common starting point for the western states to implement a common format, while modifying the rule to comply with the requirements of particular state laws. In accordance, the Commission has incorporated the definitions, relevant provisions and standard format to better inform Montana customers about choices in electrical supply.

The Commission put proposed draft rules on the disclosure and labeling provisions out to a substantial number of concerned parties for comment. The Commission's proposed rules in this notice take into consideration the comments received on or before September 17, 1999.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than December 20, 1999. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-99.7.9-RUL.")

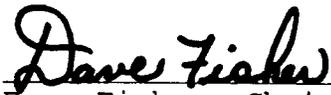
7. The Public Service Commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

8. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

9. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Legal Division, Public Service Commission, 1701 Prospect Avenue,

P.O. Box 202601, Helena, Montana 59620-2601, faxed to Legal Division at (406) 444-7618, or may be made by completing a request form at any rules hearing held by the PSC.

10. Both bill sponsor notification requirements of 2-4-302, MCA, apply and have been complied with.



\_\_\_\_\_  
Dave Fisher, Chairman



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Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 8, 1999.