

# DEREGULATION AND GREEN ENERGY: How Free Market Approaches Harm Consumers and the Environment



Jerrold Oppenheim

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Northeast Climate Conference

February 21, 2004

Cambridge, Mass.

# Regulation and Green Energy

- Energy Efficiency case study  
(regulatory action)
- Renewable Energy case study  
(legislative action)
- How to participate

# ENERGY EFFICIENCY: 1980s Massachusetts litigation

- **MILLSTONE 3 nuclear unit**
  - Rate Base disallowance
  - First to be found not economically “used and useful”
- **EDGAR**
  - Withdrawn after proof in siting case of lack of water
- **RESOURCE PLANNING PETITION**
  - “operational planning and long-term capability planning are flawed” after summer brownouts

# ENERGY EFFICIENCY: 1990s Massachusetts results

- Negotiated “collaboratives” with electric
- Gas Networks
- 1997 electricity statute
  - 2.5 mills/kWh raises about \$25M/year

# RENEWABLE ENERGY



- New England (hydro and wood) about 13% (2001)
  - 1978 - PURPA (federal statute) -> PURPA machines
    - though wind in California
  - 1980s - Integrated Resource Planning (IRP) (regulatory)
    - need and economics
    - externalities
  - Renewables Collaborative led by regulator led to ...
- Renewable Portfolio Standard (RPS)
  - *Additional* 4% by 2009 – possible 9% by 2014
  - 1997 Mass. electricity restructuring statute
  - Ramps up from 2003
  - Specified renewable technologies

# RPS vs. GREEN PRICING

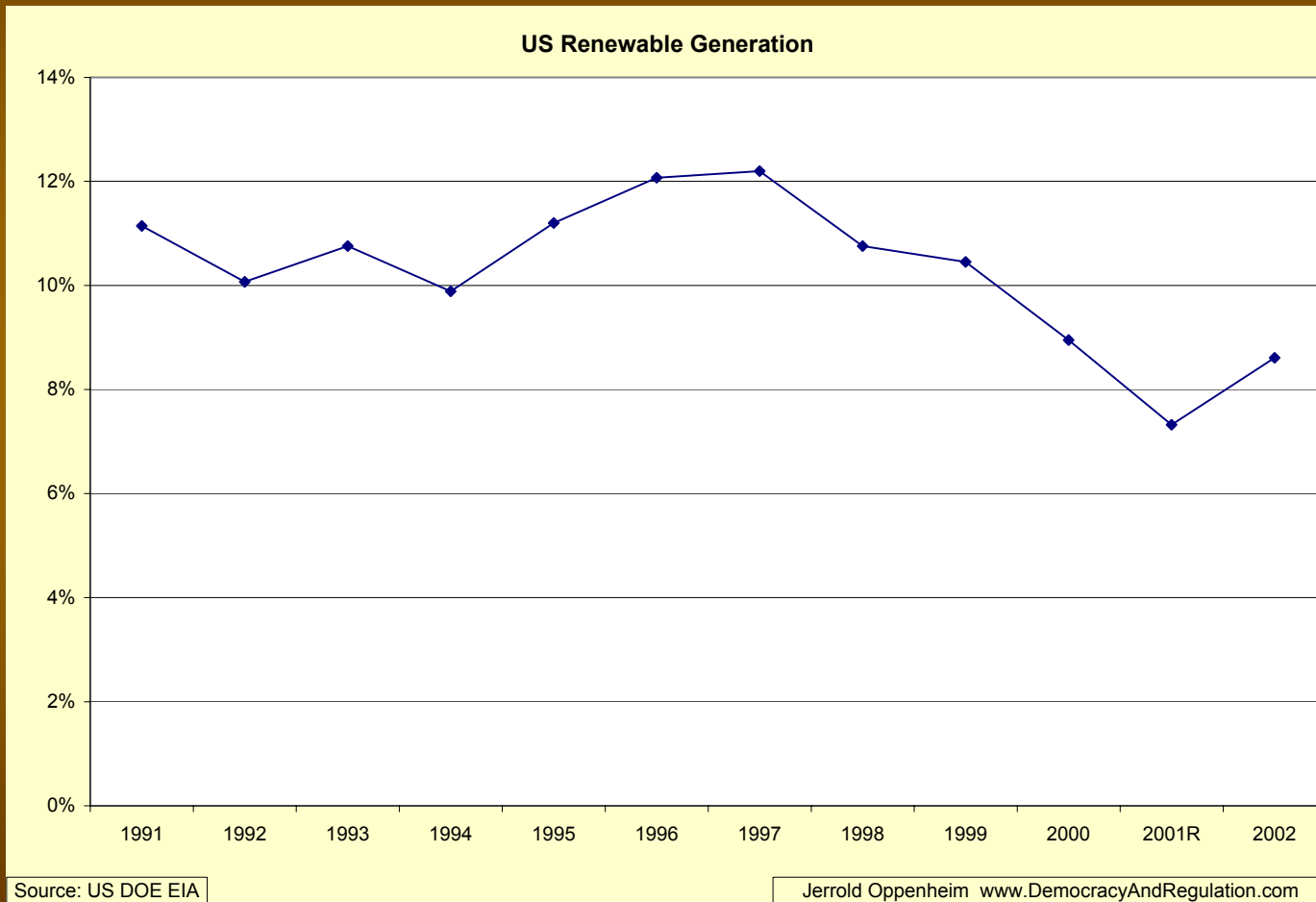


- 3% of US residential customers buying 50% green = 0.5% of total generation
  - Green?
  - New?
- Compare Mass. RPS: 4%-9% *new specified* renewables

# LESSONS: Markets

- Volatility
- Higher prices
  - Unregulated market power
  - New costs
  - Higher risks, bankruptcies
- Short-term “planning” horizon, based only on internal costs
  - Less fuel diversity
  - Lower reliability (reaction to control risk)
  - Clean air is not an objective
- Consumer frauds
  - Slamming
  - False advertising
  - Improper billing and shutoffs

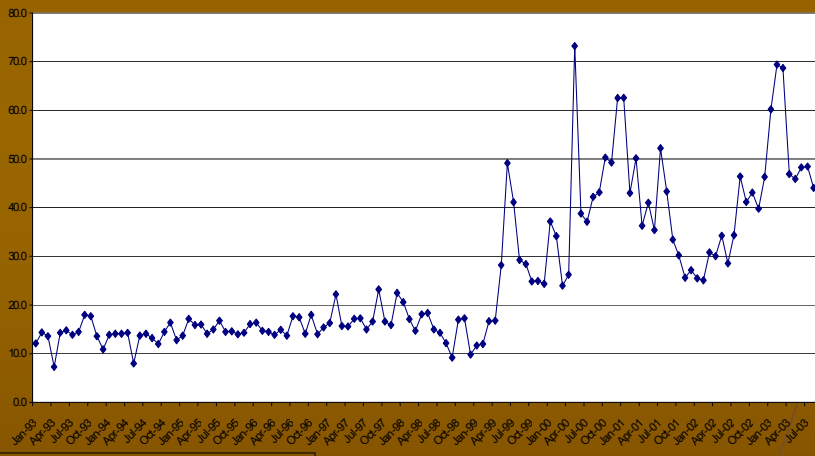
# LESSONS: Markets





# LESSONS: Markets

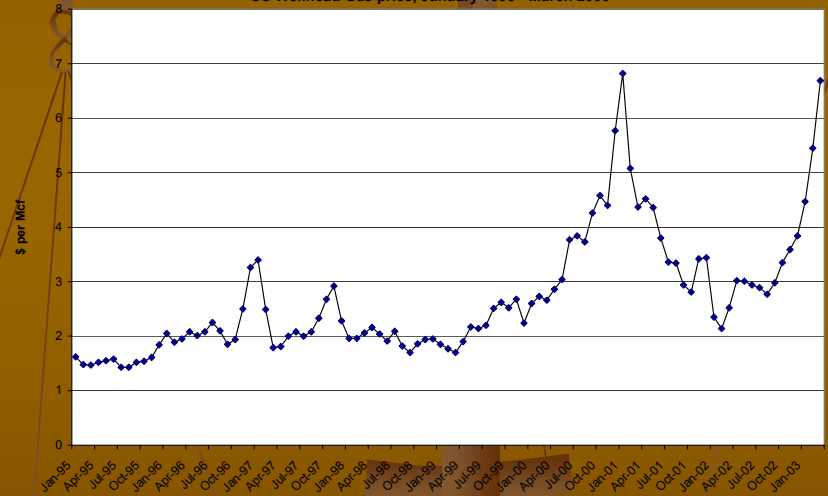
New England wholesale electricity \$/Mwh



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Source: ISONewEngland

US Wellhead Gas price, January 1995 - March 2003



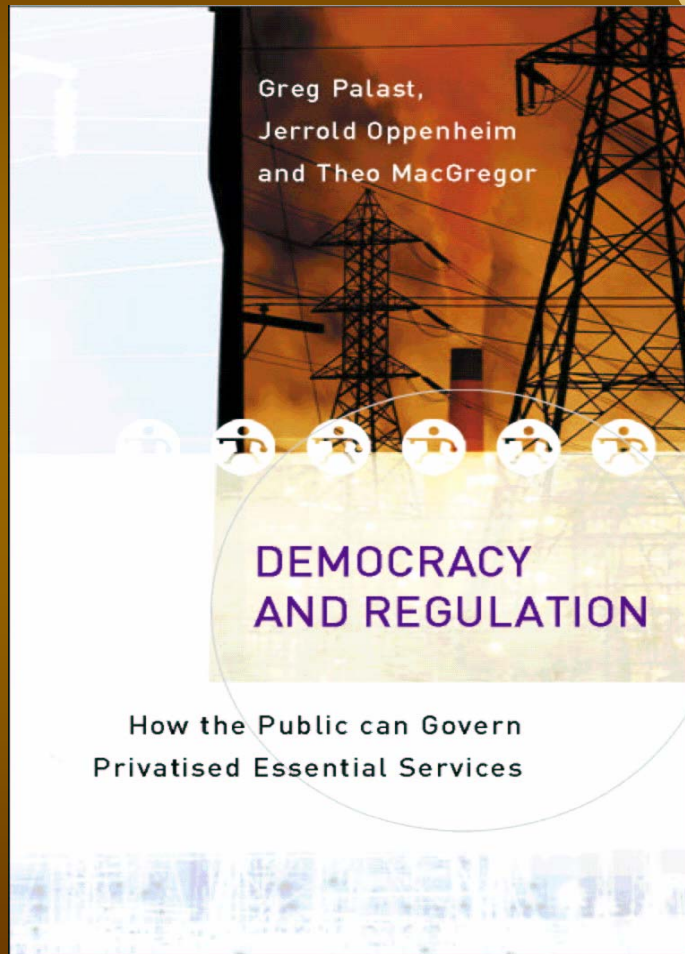
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Source: US DOE EIA

# LESSONS: Participation

- Principles of democratic regulation
  - Transparency
  - Right to participate – due process
  - Balance interests
  - Just and reasonable
  - Cost-based
- Tools of democratic regulation
  - Expertise (legal and technical), but being right is not enough
  - Levers
  - Coalitions
  - Figure out what you need and ask for all of it, but be prepared to negotiate
  - Recognize that incremental progress is real progress if the increments are sufficiently frequent
  - Be at the table with persistence: “80% of life is showing up” (W. Allen)

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# About the Speaker

**Jerrold Oppenheim** is an independent consultant and public-interest attorney who has advised and represented low-income and other utility consumer advocates, labor unions, government agencies, and utilities across the country for more than 30 years. A graduate of Harvard College and Boston College Law School, he led utility litigation and argued precedent-setting cases for four Attorneys General in New York State and Massachusetts and for Legal Services in Boston, Chicago and New York City. He has spoken and published on four continents, including *Democracy And Regulation* with Theo MacGregor and Greg Palast, published by Pluto Press (London).

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