

PROPOSED POLICY POSITION  
ELECTRIC SERVICE AND PRODUCT LIABILITY

Background

An appellate court in Texas has held that strict product liability law is applicable to personal injury cases arising out of contact with overhead power lines. This is the first court decision in the United States to hold that electric utilities are subject to product liability law in power line contact cases, rather than traditional negligence law. The decision ignores precedent in Texas and other states which had established that electricity is a "service", not a "product." Product liability law only applies where injury is caused by a "product."

Recognition of electricity as a product by the courts in the individual states will expose utilities in power line contact cases to increased liability based on product liability standards that do not require a showing of negligence. The ultimate result will be higher electricity costs to consumers.

A statutory declaration that electricity is a service, not a product, will avoid the unanticipated extension of product liability law to electricity by the courts in the various states. Injured parties will still retain their right to proceed under negligence theories in power line contact cases.

Recommendation

The Southern Legislative Conference encourages the adoption of policy through legislation by state legislatures which clearly establishes that electricity is not a product, and that prohibits the application of product liability law to cases involving the generation, transmission, distribution, or reasonable consumer use of electricity. Adoption of such policy ensures that regulated providers of electricity continue under the traditional negligence laws which afford both industry and the consuming public protection consistent with those laws.

Adopted by the Southern Legislative Conference Energy Committee,  
August 22, 1988  
(Sponsor: Representative Gerald Yost, Texas, Member, Energy  
Committee)

SO-88-0136A