

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL TRADE COMMISSION

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Comments Regarding Retail Electricity Competition )

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V010003

COMMENTS OF THE  
ILLINOIS COMMERCE COMMISSION

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**I. INTRODUCTION AND BACKGROUND**

The Illinois Commerce Commission is a state utility regulatory commission charged, among other things, with regulating activities of the investor-owned electric and natural gas utilities in Illinois.

On March 5, 2001, the Federal Trade Commission ("FTC") issued a notice in the Federal Register requesting comments regarding retail electricity competition programs. Specifically, the FTC seeks to gather information about "the results, to date, of different regulatory approaches to the issues that arise in restructuring the retail sale of electricity." In response to the FTC's request for comments, the Illinois Commerce Commission ("ICC") hereby submits its comments in the above captioned proceeding.

As explained below, the Illinois General Assembly enacted the Electric Service Customer Choice and Rate Relief Law of 1997 ("Customer Choice Law") in December 1997. See, 220 ILCS 5/16-101 et seq. The Customer Choice Law phased in the introduction of retail direct access beginning with all large industrial customers and some smaller industrial and commercial customers of investor-owned electric utilities ("electric utilities") on October 1, 1999. All remaining non-residential customers of electric utilities became eligible for retail direct access by December 31, 2000. Residential customers of electric utilities will become eligible for retail direct access by May 1, 2002.

Some retail customers in Illinois have switched electric suppliers. It is currently anticipated, however, that switching activity will remain somewhat limited until the end of the transition charge collection period, which, for customers of the largest electric utilities, is likely to be December 31, 2006. Illinois retail customers are currently protected from retail price increases by provisions in the Customer Choice Law that effectively freeze retail rates at 1996 levels. This retail rate freeze is scheduled to end on January 1, 2005, unless an electric utility can earlier demonstrate that its earnings have fallen below a

statutorily prescribed level. The retail rate freeze provides Illinois retail customers with a period of relative stability during which the transition into a competitive retail environment can occur.

It is crucial that conditions conducive to competitive markets be established during this period. The ICC has been working within its authority to establish the necessary competitive market conditions as early as possible. However, many changes that need to be undertaken to ensure the ongoing and ultimate success of Illinois' retail competition program are not under the ICC's direct control. For example, the Federal Energy Regulatory Commission ("FERC") has jurisdiction over many aspects of transmission service and has near-complete oversight responsibility for wholesale power markets. Unless effectively competitive and fully functioning wholesale power markets are established by January 1, 2005, Illinois' competitive retail power market experiment cannot succeed. In addition, it is difficult to overstate the need for a transmission system that will operate fairly and efficiently to support the power flows necessary for the operation of a competitive wholesale market.

The ICC commends the FTC for undertaking this retail electric competition inquiry. Many of the issues raised by the FTC in this request for comments are critically important to the establishment of conditions conducive to competition. It is imperative that many of these contentious issues be satisfactorily resolved before January 1, 2005 (the date on which the Illinois retail rate freeze expires). Time is short; the remaining work must begin now. As authorized in Section 4-301 of the Illinois Public Utilities Act, the ICC stands ready to work with the FTC, and with any other agency or entity, to create the fully competitive electric power market necessary to ensure that the Electric Service Customer Choice and Rate Relief Law of 1997 fulfills the promises intended in its creation.

## **II. ICC RESPONSE TO FTC QUESTIONS**

### **History and Overview**

#### **Q1. Why did the state implement retail electricity competition? What problems of the previous regulatory regime was it trying to solve?**

Section 16-101A of the Electric Service Customer Choice and Rate Relief Law of 1997 states the Legislative Findings for that Act. Among these findings, the Illinois General Assembly stated, "Competitive forces are affecting the market for electricity as a result of recent federal regulatory and statutory changes and the activities of other states. Competition in the electric services market may create opportunities for new products and services for customers and lower costs for users of electricity. Long-standing regulatory relationships need to be altered to accommodate the competition that could fundamentally alter the structure of the electric services market." Section 16-101A(b). The complete text of the Act is available at the Illinois

General Assembly's web site at  
<http://www.legis.state.il.us/publicacts/pubact90/acts/90-0561.html>.

**Q2. What were the expected benefits of retail competition? Were price reductions expected in absolute terms or in relation to what price levels would be absent retail competition? Were the benefits of retail competition expected to be available to consumers in urban, suburban, and rural areas? Were the benefits expected to be available for residential, commercial, and industrial customers? Were the benefits expected to be comparable for each group of customers?**

Section 16-101A of the Electric Service Customer Choice and Rate Relief Law of 1997 states the Legislative Findings for that Act. Among these findings, the Illinois General Assembly stated, "A competitive wholesale and retail market must benefit all Illinois citizens. The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Consumer protections must be in place to ensure that all customers continue to receive safe, reliable, affordable, and environmentally safe electric service." Section 16-101A(d). The Act also states, "All consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition and receive sufficient information to make informed choices among suppliers and services." Section 16-101A(e).

The ICC is not aware of anything in the Customer Choice Law or its legislative history that describes expectations as to the price of electricity once there is retail competition.

There is nothing in the Law that expressly distinguishes between urban, suburban, or rural customers in terms of the benefits of retail competition. It should be noted, however, that under Article XVII of the Public Utilities Act, which was enacted as a part of the same bill as the Customer Choice Law, municipally owned utilities and electric cooperatives are permitted but not required to offer retail direct access to their customers.

As noted above, retail direct access is phased in for retail customers of investor-owned electric utilities, with all non-residential customers becoming eligible by December 31, 2000, and residential customers becoming eligible by May 1, 2002.

**Q3. What factors or measures should the Commission examine in viewing the success of a state's retail electricity competition program? How should these measures be evaluated?**

Illinois law does not establish any definitive set of benchmarks by which the success of the retail competition program is evaluated, although it does require certain reports that provide information on the development of the competitive market, as well as the impact of the program on electric utilities and retail customers. See 220 ILCS 5/16-120 and 16-130, respectively. The most recent ICC report under Section 16-130 is posted on the ICC web site at <http://www.icc.state.il.us/icc/ec/docs.asp#genrep>.

In addition to the Commission's efforts to gather and report information under the mechanisms created by the Choice Law, the Chairman of the Illinois Commerce Commission has posed a number of questions concerning the development of retail electric competition in Illinois to electric utilities and other electric suppliers. One such set of questions concerned the measurement of competition in Illinois. Listed below are some quantitative measures of competition, as suggested by alternative suppliers:

- 1) The number of retail electric customers choosing delivery services;
- 2) The number of retail customers eligible to choose an alternative supplier;
- 3) The number of competitive suppliers, both affiliated with an incumbent utility and not affiliated, which have been certified by the ICC and registered to serve customers in each incumbent utility's service territory;
- 4) The number of retail customers switching service from an incumbent utility to a non-affiliated alternative supplier;
- 5) The monthly rate at which retail customers are switching to alternative providers; and/or
- 6) The level of retail electric load being served by independent alternative suppliers as compared to the retail electric load being served by incumbent utilities and/or affiliated suppliers.

Respondents were also asked to provide qualitative measures of competition. Here are some of the responses from incumbent electric utilities:

- 1) Continue to gather viewpoints of retail electric market participants;
- 2) Compile retail electric customer and supplier opinions about the performance of the retail electric market in Illinois;
- 3) Determine if retail electric customers are satisfied with the changes in the market and if so, conclude that the retail electric market is working.

- 4) Examine the ease of entry into and exit from the wholesale electric market by incumbent utilities and competitive suppliers;
- 5) Consider the ease of and/or impediments to market entry by incumbent and competitive suppliers of power and energy in Illinois;
- 6) Tie qualitative measures for the Illinois retail electric market to the status of Federal Energy Regulatory Commission dockets concerning electric transmission issues;
- 7) Evaluate the level of customer education related to retail electric competition and switching to an alternative electric supplier;
- 8) Evaluate the status of regional electric competition;
- 9) Study the volatility of the retail and wholesale electric markets; and
- 10) Establish focus groups.

[Source: "Report of Chairman's Fall 2000 Roundtable Discussions," October 2000, [www.icc.state.il.us/icc/inside/cc/ops/001031cmoctround.pdf](http://www.icc.state.il.us/icc/inside/cc/ops/001031cmoctround.pdf)]

The ICC is not endorsing any of the measures suggested by Illinois market participants or advocating them to the FTC for its adoption. Rather, the suggestions are being provided here as an indication of the broad range of measures proposed by others.

**Q4. What are the most successful and least successful elements in the state's retail competition program? Has the state taken steps to modify the least successful elements?**

In many respects, it is too early in the development of Illinois's retail electric competition program to identify the most and least successful elements. The overall success of the program will ultimately depend in large measure on the creation of a vibrant wholesale market for electricity and a fairly operated, efficient transmission system with sufficient capacity to support a regional or national wholesale electricity market.

**Consumer Protection Issues**

**Q1. What efforts were made to educate consumers about retail competition? How was the success of these efforts measured? Were the programs successful? Who funded these efforts? Who implemented the programs?**

Section 16-117 of the Customer Choice Law, requires the Illinois Commerce Commission to maintain a consumer education program to provide residential and small commercial retail customers with information to help them understand their service options, rights, and responsibilities. In accordance with the law, the ICC formed a working group in July 1998 consisting of representatives of the investor-owned utilities, alternative retail electric suppliers, consumer organizations, and ICC staff to develop educational materials. To meet the mandate, the working group developed a competitively neutral

brochure and bill insert for small commercial retail customers and made recommendations for the consumer education plan's implementation. The ICC approved the materials in March 1999 and approved updates to the bill insert in October 2000.

Because the law provides for a phased-in schedule for customer choice, initial education efforts targeted those first eligible - the approximately 66,000 non-residential customers eligible October 1, 1999, then the industrial/manufacturing customers eligible in June 2000, followed by the nearly 500,000 non-residential customers who became eligible December 31, 2000. Utilities with eligible industrial/manufacturing customers completed the required mailing of the bill insert during May 2000, and all utilities distributed the bill insert to non-residential customers during November 2000. The brochures continued to be made available through the ICC's toll-free phone number, the Plug In Illinois electric restructuring web site, utilities, and other organizations throughout the year.

Materials have been presented at the Governor's Small Business Summit and at various speaking engagements and other business group events. ICC spokespersons, including Commissioners, the agency's Executive Director, and ICC Staff, have spoken to groups such as the Building Owners and Managers Association, Chicago Athletic Club, Rotary clubs, and others. A video explaining the electric restructuring process has also been shown at various business group meetings.

Media and other outreach efforts helped educate the business community with over 500 media and 300 business organizations contacts. Additionally, increased efforts were made prior to the June 2000 industrial/manufacturing and December 31 remaining non-residential customer choice dates. To that end, some 300 media kits were sent to Illinois media contacts and grassroots organizations. Various news releases resulted in placements with wire services, daily and weekly newspapers, and business trades, often including interviews with ICC spokespersons.

The ICC "Plug In Illinois" web site contains an overview of the electric service restructuring and customer choices, the brochure content in text form as well as the brochure and bill insert in downloadable formats, a timeline, eligibility and lottery information, a list of suppliers (both certified and pending), frequently asked questions, and other information. It also includes e-mail links for comments, questions, and complaints and a survey box for users to indicate if they found the web site helpful. The web site continues to be updated with new and additional information, including Alternative Retail Electric Supplier changes, as needed, to enhance its effectiveness. The internet address for the Plug In Illinois is: <http://www.icc.state.il.us/icc/Consumer/Plugin/default.htm>

In 2000, the Plug In Illinois web site recorded more than 75,000 "hits". The majority of the hits occurred during the industrial/manufacturing eligibility period of June and July. Activity increased again in October through December, coinciding with the beginning of electric choice for all remaining non-residential customers and distribution of the bill insert and other communications. A short survey is included on the web site as well, with 91% of respondents indicating that the site was helpful. Comments received through the year also indicated that users found the site helpful in terms of finding information as well as locating additional resources.

A survey was conducted in December 2000 interviewing 250 small nonresidential electric customers statewide to assess the effectiveness of the consumer education program. Highlights of the survey are:

- Most respondents have heard at least "a little" about the restructuring of the Illinois electric utility industry.
- Nearly two-thirds have heard or read something regarding the benefits of choosing an alternative supplier.
- More than three-fourths are aware of the option to choose an electric supplier.
- Interest in receiving additional information about choices for electric power is high.
- Almost half of respondents are aware that additional information about electrical service restructuring is available from Illinois Commerce Commission.

Approximately 9,000 brochures, 780,000 bill inserts, and about 25 videos were distributed during the year 2000. Distribution channels included the ICC web site, ICC toll-free number, utilities, ARES, and other organizations.

Under Section 16-117(j) of the Customer Choice Law (220 ILCS 5/16-117(j)), the ICC's expenses associated with the Section 16-117 education program are to be paid by an annual appropriation from the General Revenue Fund in the State treasury.

**Q2. Do consumers have enough information to readily make informed choices among competing suppliers? Did the state coordinate its labeling requirements about the attributes of a supplier's product, if any, with neighboring states? Is there a need for federal assistance to provide standardized supplier labeling? If so, what would be the most useful federal role?**

The extensive Illinois customer education programs were described in the response to Q1 in this Section above. As is the case with the introduction of any new way of offering a product, consumer information concerning electricity choice is at a premium. Agents have been active in Illinois advising

customers and facilitating decisions concerning new options available under retail access. In addition to the government-sponsored customer education efforts described in the response to Q1, the market participants themselves have been engaging in customer information efforts.

Section 16-127 of the Electric Service Customer Choice and Rate Relief Law of 1997 requires "environmental disclosure" which is, essentially supplier labeling requirements. That section of the Act requires the following information to be provided by suppliers of electricity to their customers on a quarterly basis:

the known sources of electricity supplied, broken-out by percentages, of biomass power, coal-fired power, hydro power, natural gas-fired power, nuclear power, oil-fired power, solar power, wind power, and other resources, respectively.

The ICC's rules implementing Section 16-127 can be found at 83 Illinois Administrative Code 421, which is readily available on the ICC web site at [www.icc.state.il.us/icc/Doclib/Rules.asp#441](http://www.icc.state.il.us/icc/Doclib/Rules.asp#441).

Illinois has not coordinated its environmental labeling requirements with neighboring states, but many states appear to have adopted similar product labeling requirements in their retail electric choice plans.

If the term "standardized supplier labeling" in this Q2 is intended to refer to standardization of terms and conditions in suppliers' offers to retail customers, then the ICC responds as follows. The ICC believes that standardizing the terms and conditions of supplier offers would unduly restrict the richness of alternative services offered to consumers. At this time, the ICC believes that retail customers will be able to sort through varied supplier offers and make reasoned decisions.

**Q3. Have consumers complained about unauthorized switching of their accounts to alternative suppliers (slamming) or the placement of unauthorized charges on their electric bills (cramming)? Were rules adopted to prevent these practices? Has the state taken enforcement action under its new authority against slamming and cramming? Have these actions been effective to curb the alleged abuses?**

Section 16-115A (b) of the PUA states:

(b) An alternative retail electric supplier shall obtain verifiable authorization from a customer, in a form or manner approved by the Commission consistent with Section 2EE of the Consumer Fraud and

Deceptive Business Practices Act, before the customer is switched from another supplier.

Section 2EE of the Consumer Fraud and Deceptive Practices Act: (815 ILCS 505/2EE.) prohibits an electric service provider from submitting or executing a change in a subscriber's selection of a provider of electric service unless the new provider has obtained the customer's written authorization in a form that meets the requirements prescribed in that Section. The ICC is not aware of any provision in Illinois law that directly addresses "cramming" with respect to electricity service.

Illinois has not experienced slamming and cramming as a significant problem to date. This may well be due to the fact that suppliers must obtain a customer's written authorization prior to enrolling a customer with the supplier's service, in accordance with the statutes cited above. The opportunity for slamming and cramming is also limited, in terms of the sheer number of customers, until May 1, 2002, when residential customers obtain access to choice. Any supplier that does engage in unauthorized switching of customers is subject to monetary penalties, as well as revocation of the supplier's certificate of service authority for substantial or repeated violations. An additional reason why slamming has not occurred is that utilities will only act on enrollment requests provided by certified suppliers. Thus, slamming, should it occur, would likely be confined to certified suppliers only.

**Is there a need for federal assistance with slamming and cramming issues? If so, what would be the most useful federal role?**

Based on the Illinois experience thus far, there does not appear to be a need for federal assistance. If the experience of other states suggests a need for such assistance, a federal law fashioned after the law concerning unsolicited mailing of items might be appropriate, i.e., if a supplier cannot show that the customer ordered the service, the customer does not have to pay for it.

**Q4. How did the state facilitate the ability of customers to switch to a new supplier? Have these efforts been successful? Does the state allow consumers to aggregate their electricity demand? If so, has aggregation enabled consumers to benefit from retail electricity competition? If not, why not?**

Section 16-115A(b) of the PUA describes the required procedures for customer switching as described in response to Q3 in this Section above. As stated in the introduction to these Comments, Illinois has experienced limited customer switching.

With respect to aggregation, any supplier's basic function is to "aggregate" the loads of a diverse set of customers. However, the ICC interprets this question to concern whether Illinois law permits suppliers to aggregate the loads of the members of the same organization. This is expressly permitted under Illinois law (see, 220 ILCS 5/16-104(b) and 220 ILCS 5/16-115A(g)) and has occurred to quite a significant degree. For example, retail business chains, hospitals, schools, and other groups have successfully used aggregation as a means to reduce electricity costs.

**Q5. Has the state established licensing or certification requirements for new suppliers to provide electricity to customers? Why? Which licensing provisions are designed to protect consumers? How do they operate?**

The Customer Choice Law requires alternative suppliers who wish to sell electricity to retail customers to obtain certification from the Illinois Commerce Commission (220 ILCS 5/16-115). To obtain a certificate, an applicant must show, among other things, that it "possesses sufficient technical, financial and managerial resources and abilities to provide the service for which it seeks a certificate." The ICC has adopted rules pursuant to Section 16-115. 83 Ill. Adm. Code 451 (available on the ICC web site at [www.icc.state.il.us/icc/doclib/rules/83IAC451.doc](http://www.icc.state.il.us/icc/doclib/rules/83IAC451.doc)).

Electric utilities may also sell electricity outside their service areas without receiving certification. Electric cooperatives and municipal electric utilities are permitted to sell electricity outside their respective service areas, but only if they provide delivery services within their services areas for the benefit of electric utilities in whose service areas they seek to provide electricity.

**Has the state taken enforcement action against unlicensed firms?  
Have these actions been effective to curb unlicensed activity?  
Have these requirements acted as an entry barrier for new suppliers?**

The ICC has not taken any enforcement actions against unlicensed firms.

**Q6. Did the state place any restrictions on the ability of a utility's unregulated affiliate(s) to use a similar name and/or logo as its parent utility, in order to avoid consumer confusion when the affiliate offered unregulated generation services? Why or why not? What has been the experience to date with the use of these restrictions?**

The ICC did not place restrictions on affiliates' use of names and/or logos. The ICC has adopted administrative rules to govern non-discrimination in affiliate transactions for electric utilities, including the following: (Part 450 of the Illinois Administrative Code is available on-line at <http://www.icc.state.il.us/icc/doclib/rules/83IAC450.doc>)

#### Section 450.25 Marketing and Advertising

a) An electric utility shall neither jointly advertise nor jointly market its services or products with those of an affiliated interest in competition with ARES.

b) Nothing in subsection (a) shall be construed as prohibiting an affiliated interest in competition with ARES from using the corporate name or logo of an electric utility or electric utility holding company.

In its Order in the rulemaking proceeding that adopted the above-excerpted provisions, the ICC explained its ruling as follows:

In excluding joint marketing from the definition of corporate support in Section 450.10, it was not and is not the intent of the Commission to ban an affiliated interest in competition with ARES' use of the utility's name or logo, as C&GP [Consumer and Governmental Parties] and others have asserted. The Commission does not view an affiliated interest in competition with ARES' use of a utility's name or logo as corporate support. Rather the Commission views them as an intangible shareholder asset that transcends the scope of corporate support. To clarify this position, the Commission has added subsection (b). Whether the use of company names and logos will create any misperceptions on the part of consumers, as C&GP alleges, seems plausible, but less likely given the prohibition against joint marketing and advertising imposed by this section and the non-discriminatory provision in Section 450.20(c). Furthermore, at this point, the Commission believes it would be doing a tremendous disservice to consumers by essentially requiring affiliated interests in competition with ARES to masquerade as non-affiliated entities, when they are in fact affiliated. (Order, Dockets 98-0013 and 99-0035, consolidated, September 14, 1998)

#### **Are consumers knowledgeable about who their suppliers are?**

The ICC has not analyzed to any significant extent the degree to which consumers are knowledgeable about the corporate affiliations of electric suppliers or the degree to which such knowledge would enhance consumer welfare.

**Q7. Did the state place any restrictions on third-party or affiliate use of a utility's customer information (e.g., customer usage statistics, financial information, etc.)? What were the reasons for enacting the restrictions? What has been the effect of these restrictions on new marketing activity?**

The Customer Choice Law (220 ILCS 5/16-122) contains the following provisions:

Sec. 16-122. Customer information.

(a) Upon the request of a retail customer, or a person who presents verifiable authorization and is acting as the customer's agent, and payment of a reasonable fee, electric utilities shall provide to the customer or its authorized agent the customer's billing and usage data.

(b) Upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided however, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer pursuant to subsection (a) of this Section.

(c) All such customer information shall be made available in a timely fashion in an electronic format, if available.

This section of the law ensures that alternative suppliers can obtain information when the customer provides authorization but prevents the release of the information absent the specific customer authorization. The ICC is unaware of complaints that this provision has hindered entry of alternative suppliers.

Section 450.70 of the Illinois Administrative Code effectively makes this same provision of the law applicable to utility affiliates' access to customer information as well.

**Q8. Has the state adopted any other measures intended to protect consumers (e.g., length of consumer contracts, automatic renewal provisions, etc.) as it implemented retail competition? What has been the effect of these measures?**

Illinois has not adopted either of the two consumer protection measures listed in this question. However, Illinois law does contain other such measures, including the following:

- Alternative suppliers must obtain a customer's written consent to be switched from the incumbent utility's electric service to the supplier's service. 815 ILCS 505/2EE.
- Alternative suppliers must maintain "call centers", where customers can call and receive current information. 220 ILCS 5/16-123.
- Alternative suppliers must provide quarterly environmental "disclosure" statements that show the known sources of electricity supplied to customers. 220 ILCS 16-127; 82 Ill. Adm. Code 421.
- Suppliers that market to smaller-use customers (residential customers and customers with less than 15,000 annual kWh usage) are subject to certain disclosure requirements regarding contract prices, terms and conditions. 220 ILCS 5/16-115A(e).
- Suppliers serving smaller use customers may not engage in discriminatory marketing such as "redlining" practices. Section 16-115A(e)(iii).
- The Commission may adopt a uniform disclosure form which alternative retail electric suppliers would be required to complete enabling consumers to compare prices, terms and conditions offered by such suppliers. 220 ILCS 5/16-117(h).

**Q9. To what extent have suppliers engaged in advertising to sell their product(s)? Do some suppliers claim that their product is differentiated (e.g., that it has environmental benefits)? Has there been any enforcement or attempts to verify these advertising claims? Do any certification organizations, such as Green-e, operate in the state? Are they used by (or at least available to) a substantial portion of consumers?**

The ICC has observed only very limited mass media advertising by alternative suppliers to this point. The most significant differentiating variable among the various supplier offerings appears to be price. The ICC is not aware of any certification organizations operating in Illinois that have actively engaged in verifying suppliers' "green power" claims. However, Section 16-115A(e)(iii) requires that, "An alternative retail electric supplier shall provide documentation to the Commission and to customers that substantiates any claims made by the alternative retail electric supplier regarding the technologies and fuel types used to generate the electricity offered or sold to customers."

### **Retail Supply Issues**

**Q1. What difficulties have suppliers encountered in entering the market? What conditions/incentives attract suppliers to retail markets?**

New suppliers have faced start-up costs that any entrant to a new market would face, as well as the costs of seeking certification as an alternative retail electric supplier. In addition, many new suppliers have participated in ICC and FERC dockets where issues governing the behavior of market participants are discussed.

Suppliers may be attracted to markets with some of the following characteristics:

- Rules regarding the market behavior of utility affiliates.
- Relatively high retail rates.
- Relatively low transition fees / high shopping credits.
- Reasonable licensing requirements.
- Relatively large amount of customer load eligible to purchase electricity from alternative suppliers.

Suppliers in Illinois, to this point, have had difficulties in the following areas:

- A scarce supply of competitively priced wholesale power and energy.
- Utilities were permitted to sign up customers to long-term contracts prior to the opening of the market. Utilities are also permitted to compete for customers that are eligible to purchase power and energy from alternative suppliers.
- It is the ICC's understanding that at least some suppliers have been dissatisfied with certain aspects of FERC tariffs, including energy imbalance provisions.
- Relatively low retail rates in some utility service areas.

Further, it should be noted in this context that if an applicant for certification as an alternative retail electric supplier is, or is affiliated with, an electric utility serving a defined geographic area to which power and energy can be physically and economically delivered by the electric utility or utilities within whose service areas the applicant wishes to provide service, the applicant must show as a prerequisite to certification that it or its affiliate offers delivery services within its service area that are comparable to those offered by the electric utility or utilities within whose service areas the applicant wishes to provide service. 220 ILCS 16-115(d)(5).

Suppliers also have had difficulty in acquiring sufficient transmission capacity to serve retail customers.

**Have suppliers exited the market after beginning to provide retail service? If so, why?**

The ICC is not aware of any supplier which had made sales of any significance actually exiting the Illinois market, although several licensed suppliers appear to have expended very little effort in marketing to customers. Requests from two suppliers to surrender their certificates are pending as of the date these ICC Comments are being prepared.

**Q2. What are the customer acquisition costs and operational costs to service retail customers? How do acquisition and operational costs compare to profit margins for electric power generation services? Do retail margins affect entry? If so, how?**

In addition to the start-up costs that any new business in any industry would have, electric suppliers face additional costs, including the costs of obtaining certification and the costs of participating in regulatory proceedings. Allowing suppliers to use multiple customer enrollment methods, including enrollment over the Internet and through targeted marketing efforts, could minimize customer acquisition costs. Liberal customer aggregation policies can also mitigate customer acquisition costs.

The ICC has not conducted a study of supplier acquisition and operational costs, but it is worth noting that in Illinois, some 40% of all customers who have switched from bundled service are switching to the Power Purchase Option service (see, 220 ILCS 5/16-110(b)). Under this service, customers who purchase power and energy from incumbent utilities for a price that reflects the "mitigation factor" deduction from the price of electricity (see 220 ILCS 16-102, definition of "transition charge," and 16-108 (f), (g) and (h), which address transition charges) are permitted to assign power so purchased to an alternative retail electric supplier, which is in turn entitled to a slight additional reduction in the price paid for the electricity its retail customer uses. This is an indication that the wholesale market in which Illinois-based suppliers would consider purchasing power and energy is not yet capable of fully supporting a competitive retail market in Illinois.

Generally speaking, the lower the customer transition charges and the higher the shopping credit, the more supplier entry is encouraged. In Illinois, customers can be expected to save about 8% off their existing electric bills by subscribing to the power purchase option the Customer Choice Law requires all electric utilities who have implemented transition charges to offer their customers. In order to compete with the power purchase option offered by the largest utilities, then, a new supplier would have to secure electricity cheaply enough that it can offer its customers more than the 8% discount the utility must offer.

**Did the state harmonize the procedures suppliers use to attract and switch customers with other states' procedures, in order to reduce suppliers' costs?**

Many of the procedures relating to customer enrollment and communication between suppliers and utilities (as well as a number of other procedures) have been patterned after the procedures that were already in place in California and Pennsylvania.

**Q3. Have customers switched to new suppliers? Why or why not? Are there greater incentives for certain customer classes (i.e., industrial, commercial, residential) than for others to switch suppliers? Why or why not? Are penalties or different rates applied to customers that switch back to the supplier of last resort? Are there other measures to determine whether customers are actively considering switching suppliers? If so, do these indicators show different patterns than the switching rate data?**

The ICC keeps track of the number of customers switching suppliers. Current switching information is available on the ICC web site at: <http://www.icc.state.il.us/icc/ec/docs.asp#dasr>.

Additionally, the ICC has issued a number of reports to the Illinois General Assembly that show the amount of switching that has occurred since the opening of the market on October 1, 1999.

Switching has occurred in five of the state's nine investor-owned utility service areas. For the areas where switching has occurred, the switching rate is about 10% of the total number of customers eligible to switch. Larger-use customers have switched with greater frequency than smaller-use customers. In the Commonwealth Edison service area, switching is occurring at a relatively high rate: about 20% of commercial customers, and approximately 75% of industrial customers have switched. Approximately one-third of the switching that has taken place, however, is switching to a lower-cost service that most utilities must offer called the Power Purchase Option (see Sec. 16-110 of the Customer Choice Law; the power purchase option is also addressed in the response to Q2 in this section, Retail Supply Issues).

Customer classes have essentially the same incentive to switch. Currently, each customer who switches can expect about 8% in savings.

The three largest Illinois utilities do not impose penalties or different rates on customers that switch back to utility provider of last resort service. However, if power and energy are declared to be competitive under Section 16-113 of the Customer Choice Law (220 ILCS 5/16-113), customers seeking to switch back to the supplier of last resort service cannot be assured of receiving the regular bundled rate. In addition, once a service is declared competitive under Section 16-113, the electric utility's obligation to offer that

service to customers other than residential and small commercial customers is terminated, under Section 16-103(a) of the Customer Choice Law. 220 ILCS 5/16-103(a).

The ICC has not done extensive surveying or undertaken other measures to ascertain whether customers are “actively considering switching suppliers.” Rather, the ICC attempts to keep track only of completed switches.

**Q4. Have suppliers offered new types of products and services (e.g., time of day pricing, interruptible contracts, green power, etc.) in states where retail competition has been implemented? If so, describe the products and what customer response has been.**

The ICC does not require suppliers to inform the ICC as to the types of offers they are marketing to customers. However, it appears that the most popular types of marketing offers by suppliers in Illinois concern flat or constant rates, rather than variable rates. The ICC is not aware of any marketer heavily promoting green power offers in Illinois.

**Q5. What are the benefits or drawbacks of the different approaches to handling the supplier of last resort obligation for customers who do not choose a new supplier (e.g., allow incumbent utility to retain the obligation to provide generation services to non-choosing customers, auction the obligation, or assign the obligation to non-utility parties). What has been consumer reaction to these approaches? Is provider of last resort service necessary?**

The “supplier of last resort obligation” in Illinois can be found in Section 16-103 of the Customer Choice Law. Section 16-103(a) requires that, “An electric utility shall continue offering to retail customers each tariffed service that it offered as a distinct and identifiable service on the effective date of this amendatory Act of 1997 until the service is (i) declared competitive pursuant to Section 16-113, or (ii) abandoned pursuant to Section 8-508.” In addition, Section 16-103(c) of that same Act states, “Notwithstanding any other provision of this Article, each electric utility shall continue offering to all residential customers and to all small commercial retail customers in its service area, as a tariffed service, bundled electric power and energy delivered to the customer’s premises consistent with the bundled service provided by the electric utility on [December 16, 1997].”

Consequently, the Illinois General Assembly has placed the “supplier of last resort obligation” directly on the incumbent electric utilities. The General Assembly did not choose to auction this obligation or disperse it through assignment to other suppliers.

It is also clear from the existence of Sections 16-103(a) and 16-103(c) that the Illinois General Assembly found it proper to impose a supplier of last resort obligation.

The ICC has no information concerning Illinois consumer reaction to alternative approaches for addressing the supplier of last resort obligation, because alternatives were not adopted in Illinois.

### **Retail Pricing Issues**

**Q1. How is entry affected by the price for the provider of last resort service (for customers who do not choose) or for default service (for customer whose supplier exits the market)? How does the price for the provider of last resort or default service compare to prices offered by alternative suppliers? Is the price for provider of last resort service or default service capped? If so, for how long?**

Section 16-111(b) of the Illinois Electric Service Customer Choice and Rate Relief Law of 1997 required utilities to reduce bundled rates for most Illinois residential customers by 15% on January 1, 1998 and will require an additional 5% reduction in bundled rates for most Illinois residential customers on October 1, 2001 (Commonwealth Edison) and on May 1, 2002 (Illinois Power). Smaller Illinois utilities were required to reduce bundled rates for residential customers by lesser amounts and the three smallest electric utilities, each of which serves less than 12,500 customers, were not required to reduce rates. The bundled rates for residential customers were then effectively frozen at those lower levels. Section 16-111(a) of the Act effectively froze bundled rates for commercial and industrial customers at their October 1, 1996 levels.

The effectively frozen bundled retail rates will remain in effect through the mandatory transition period, which according to Section 16-102 of the Customer Choice Law, ends on January 1, 2005.

In many cases, these effectively frozen bundled retail rates will constitute the retail "price to beat" for new entrants. All else equal, retail entry will be accordingly affected by the level of these bundled rates. As noted in the response to Q2 in the section "Retail Supply Issues," the power purchase option offered by utilities implementing retail charges will effectively set the "price to beat" when it is offered.

Section 16-104 of the Customer Choice Law phases in the introduction of retail direct access in Illinois. Large industrial customers and some commercial and small industrial customers became eligible on October 1, 1999. All remaining commercial and industrial customers became eligible for retail direct

access as of December 31, 2000. Residential customers will not obtain retail direct access rights until May 1, 2002. Consequently, there is no data concerning the affect of the statutory reduction in the level of the residential frozen bundled rates on entry into the residential supply market because that market is not yet open.

**Q2. Has the state required retail rate reductions prior to the start of retail competition? What is the rationale for these reductions? How have state-mandated rate reductions prior to the start of retail competition affected retail competition?**

As described in response to Q1 above in this Section, Illinois required significant residential rate reductions prior to the start of retail competition. The state's two largest utilities reduced residential rates 15% about one year before non-residential customers became eligible for choice, to be followed by a further 5% reduction. Most of the smaller utilities reduced rates about 5%. As explained in response to Q1 in this section above, these statutory rate reductions have not yet affected residential retail competition, because residential customers are not yet eligible. However, when residential customers receive choice in May 2002, the rate reductions may discourage some suppliers from serving residential customers.

Non-residential rates were not reduced from their levels on the effective date of the Customer Choice Act.

**Q3. Do any seasonal fluctuations in the price of wholesale generation cause some suppliers to enter the market only at certain times of the year? How have these suppliers fared?**

As noted several times above, Section 16-110 of the Customer Choice Law requires utilities to provide delivery services customers a power purchase option ("PPO"). The PPO allows non-residential delivery services customers that are paying transition charges to the electric utility to purchase electric power and energy from that electric utility at a price or prices equal to the sum of the following:

- (i) The market values that are determined for the electric utility in accordance with Section 16-112 and used by the electric utility to calculate the customer's transition charges; and
- (ii) A fee that compensates the electric utility for any administrative costs it incurs in arranging to supply such electric power and energy.

This PPO service has evolved into the wholesale "price to beat" in the Illinois retail markets. The indexing methodology used to determine PPO pricing has resulted in the price of PPO service being about the same in the summer, during the peak electric season, as it is in the winter. However,

prices in the wholesale market for electricity exhibit seasonal fluctuations. Summer wholesale prices peak at prices considerably higher than those observed in the winter. The flat rate structure of the PPO has resulted in what is arguably the gaming of the system both by retail electric suppliers (RES) and by customers. During the winter and spring, RES have been able to find wholesale supply at prices below the PPO. However, once summer wholesale prices start to rise, customers are placed, either through self-election or through the action of the customer's RES, on the utility-provided PPO service.

Once a customer elects PPO service, Illinois law allows the utilities to require that the customer remain on the PPO for 12 months. This provision perpetuates the customer staying on the PPO plan once started, since at the end of 12 months from the initial start-up, summer wholesale rates have again risen above those offered on the PPO. Due to this phenomenon, the PPO is one of the principal sources of service for customers electing alternative service. As a result, the role of the RES has in many cases been reduced to that of an agent between the utility and the customer, rather than an actual alternative supplier in the retail market.

**Q4. How has the state addressed public benefit programs (e.g., universal service requirements, low income assistance, conservation education, etc.) as it has implemented retail competition?**

The Illinois General Assembly made provisions for the funding of low income and energy efficiency programs in the restructuring legislation it passed -- see PA 90-0561 at <http://www.legis.state.il.us/publicacts/pubact90/acts/90-0561.html>

The Illinois Department of Commerce and Community Affairs administers these ratepayer-funded programs:

1. Renewable Energy Resources and Coal Technology Development Assistance Charge (20 ILCS 687/6-5) [subject to appropriation by the General Assembly]
  - Revenue collected based on monthly charge on each electric and gas service accounts
2. Energy efficiency trust program (20 ILCS 687/6-6) [subject to appropriation by the General Assembly]
  - Annually prorated among each electric utility and each alternative retail electric supplier supplying electric power and energy to retail customers located in Illinois

3. Supplemental Low-Income Energy Assistance Fund (305 ILCS 20/13) [Subject to Appropriation by the General Assembly]
  - Revenue collected based on monthly charge on each electric and gas service accounts
4. Coal Technology Development Assistance Fund (30 ILCS 730/3)
  - Revenue realized from 1/64 of the tax imposed by the Electricity Excise Tax Law

**Which of these programs are necessary as competition is introduced and why?**

As evidenced by their inclusion in Illinois law, all were found to be necessary by the Illinois General Assembly.

**Are public benefits available to all customers or are they restricted to customers of the supplier of last resort? How does this affect retail competition?**

The ICC does not necessarily accept the concept of "Public benefits," at least as that term has been used by interest groups seeking a new mechanism for the redistribution of wealth across state lines. The programs funded as noted above are available to all customers. To the extent that the funding mechanism for any program as applied to any group of electric customers would raise costs, in relation to off-system options where fees could be avoided, then the market is distorted.

**Market Structure Issues**

**Q1. How has the development of Regional Transmission Organizations (RTOs) affected retail competition in the state?**

Section 16-126 of the Customer Choice Law requires the major Illinois electric utilities to become members of an "independent system operator," which was the model for regional transmission organizations with the most apparent currency in 1997. The Illinois Law effectively recognizes that utility participation in a regional transmission organization is necessary to "facilitate the development of an open and efficient marketplace for electric power and energy to the benefit of Illinois consumers." Section 16-126. The Illinois Act specifies deadlines for Illinois utilities to file an ISO proposal with FERC but does not specify a deadline for ISO operation.

The major Illinois electric utilities initially met their Section 16-126 obligation by joining the Midwest ISO. Late in 2000, Illinois Power, followed by Commonwealth Edison and Ameren, announced their desires to exit the Midwest ISO and to join the Alliance RTO. Resolution of that matter is still pending.

In any event, it is not expected that an RTO will begin operating in the Midwest before December 15, 2001. Consequently, retail competition in Illinois, to date, has not been assisted by the operation of an RTO for the Midwest region. Conversely, it is not possible to precisely say the extent to which retail competition in Illinois has been harmed because an effective RTO has not been operating for this region.

The development and early operation of a properly designed and appropriately configured RTO for the Midwest will be critical to the success of Illinois's retail direct access program and in securing benefits of electric competition for retail customers. However, such an RTO has not yet been developed.

**Q2. Did the state require the divestiture of generation assets (or impose other regulatory conditions on the use of these assets) when retail competition was introduced?**

Illinois did not require the divestiture of generation assets. The restructuring law allows the utilities to voluntarily "spin off" or sell their generation, as long as they can prove that they will be able to meet their service obligations in a safe and reliable manner. Section 16-111(g) of the Customer Choice Law states in part as follows:

During the mandatory transition period, an electric utility may, without obtaining any approval of the Commission [ICC] other than that provided for in this subsection and notwithstanding any other provision of this Act or any rule or regulation of the Commission that would require such approval:

- (1) Implement a reorganization, other than a merger of 2 or more public utilities as defined in Section 3-105 or their holding companies;
- (2) Retire generating plants from service;
- (3) Sell, assign, lease or otherwise transfer assets to an affiliated or unaffiliated entity and as part of such transaction enter into service agreements, power purchase agreements, or other agreements with the transferee; provided, however, that the prices, terms and conditions of any power purchase agreement must be approved or allowed into effect by the Federal Energy Regulatory Commission. . .

\* \* \* \* \*

(220 ILCS 5/16-111(g))

The three largest utilities in Illinois (Commonwealth Edison, Illinois Power, and Ameren), have all taken advantage of these provisions allowing voluntary restructuring and have spun or sold off all of their generation to affiliates or other

firms. In the case of Illinois Power (except for Clinton Station) and Ameren, all of the utility's generation has been transferred to unregulated affiliates.

**To what extent was divestiture of generation assets a component of the state's handling of a utility's stranded costs?**

Section 16-111(g) of the Customer Choice Law states in part as follows:

"in order to implement a reorganization, retire generating plants from service, or sell, assign, lease or otherwise transfer assets pursuant to this Section, the electric utility shall provide the Commission with at least 30 days notice of the proposed reorganization or transaction, which notice shall include the following information:

\* \* \* \* \*

(ii) A description of how the electric utility will use proceeds of any sale, assignment, lease or transfer to retire debt or otherwise reduce or recover the costs of services provided by such electric utility;

\* \* \* \* \*

(iv) An irrevocable commitment by the electric utility that it will not, as a result of the transaction, impose any stranded cost charges that it might otherwise be allowed to charge retail customers under federal law or increase the transition charges that it is otherwise entitled to collect under this Article XVI;..."

Stranded costs collectable by the utilities are not specifically identified nor addressed in the law for collection by the utilities. Instead, the utilities are entitled to implement "transition charges." Section 220 ILCS 16-102 of the Customer Choice Law establishes the formula for calculating transition charges applicable to a customer or class of customers as a cents per kilowatt-hour charge as follows:

- (1) The amount of revenue that an electric utility would receive from the retail customer or customers if it were serving such customers' electric power and energy requirements as a tariffed service based on (A) all of the customers' actual usage during the 3 years ending 90 days prior to the date on which such customers were first eligible for delivery...and (B) on (i) the base rates in effect on October 1, 1996...
- (2) Less the amount of revenue, other than revenue from transition charges and decommissioning rates, that the electric utility would receive from such retail customers for delivery services provided by the electric utility, assuming such customers were taking delivery services for all of their usage, based on the delivery services tariffs in effect during the year for which the transition charge is being calculated and on the usage identified in paragraph (1);

- (3) Less the market value for the electric power and energy that the electric utility would have used to supply all of such customers' electric power and energy requirements, as a tariffed service, based on the usage identified in paragraph (1), with such market value determined in accordance with Section 16-112 of this Act;
- (4) Less the following amount which represents the amount to be attributed to new revenue sources and cost reductions by the electric utility through the end of the period for which transition costs are recovered pursuant to Section 16-108, referred to in this Article XVI as a "mitigation factor":
  - (A) For nonresidential retail customers, an amount equal to the greater of (i) 0.5 cents per kilowatt-hour during the period October 1, 1999 through December 31, 2004, 0.6 cents per kilowatt-hour in calendar year 2005, and 0.9 cents per kilowatt-hour in calendar year 2006, multiplied in each year by the usage identified in paragraph (1), or (ii) an amount equal to the following percentages of the amount produced by applying the applicable base rates (adjusted as described in subparagraph (1)(B)) or contract rate to the usage identified in paragraph (1): 8% for the period October 1, 1999 through December 31, 2002, 10% in calendar years 2003 and 2004, 11% in calendar year 2005 and 12% in calendar year 2006; and
  - (B) For residential retail customers, an amount equal to the following percentages of the amount produced by applying the base rates in effect on October 1, 1996 (adjusted as described in subparagraph (1)(B)) to the usage identified in paragraph (1): (i) 6% from May 1, 2002 through December 31, 2002, (ii) 7% in calendar years 2003 and 2004, (iii) 8% in calendar year 2005, and (iv) 10% in calendar year 2006;
- (5) Divided by the usage of such customers identified in paragraph (1), provided that the transition charge shall never be less than zero."

**Was divestiture used to remedy a high concentration of generation assets serving the state? Was there appreciable voluntary divestiture of generation assets?**

Divestiture was not used to remedy a high concentration of generation assets serving the state. All divestiture of generation assets was voluntary, and generally involved the sales of generation assets to each utility's unregulated affiliate. As a result, there is a high concentration of generation ownership within each of the Illinois utility service territories. According to ICC calculations, Commonwealth Edison's affiliate owns 40% of the generation capacity in its territory, and controls a majority of the remaining generation through contracts expiring in 2005. Ameren's unregulated generation affiliate owns 89% of the generation capacity in its service territories. Illinois Power's unregulated affiliate accounts for 80% of the generation capacity in the utility's service territory.

**Has the state examined whether there has been appreciable consolidation of ownership of generation serving the state since the start of retail competition?**

Since the start of retail direct access in Illinois, the ICC has been examining the concentration of ownership of generation serving the state. In all cases, there has been a slight decrease in generation ownership concentration due, for the most part, to the growth of IPP generation. The voluntary divestiture of generation has also had some impact in both Illinois Power's and Commonwealth Edison's service territory. However, as noted in the discussion above, generation ownership is still highly concentrated.

**Q3. If a utility no longer owns generation assets to meet its obligations as the supplier of last resort or default service provider, what market mechanism (e.g., spot market purchases, buy back or output contracts, etc.) does it use to obtain generation services to fulfill these obligations? What share of a utility's load is obtained via the different mechanisms? How are these shares trending?**

Section 16-111(g)(vi) requires electric utilities to provide a "description of how the electric utility will meet its service obligations under this Act in a safe and reliable manner" before a major re-organization or generation spin-off can take place. In order to meet reliability requirements, this provision of Illinois law effectively required utilities to sign buy-back contracts for the output of the plants they sold through the end of 2004.

Currently the vast majority of power in ComEd, Illinois Power, and Ameren's territory is being provided to the utility via contracts with those

entities that acquired their generation. Most of the contracts will expire at the end of 2004, when the utilities are allowed to request new rates.

**Is the market mechanism transparent? Is it necessary to monitor these market mechanisms? Why or why not? If so, what should the monitor examine?**

Currently, the wholesale market in Illinois is not readily transparent (there is no power pool auction). Future transparency hinges on the structure of market mechanisms of the Alliance RTO and the Midwest ISO. The high percentage of generation owned by unregulated utility affiliates makes market monitoring of any market mechanism imperative. The market monitor should scrutinize, among other things, transmission capacity on the network as a whole, the amount of transmission that is made available and used relative to capacity (for the functioning of the spot and long-term markets), the behavior of prices during peak periods relative to fuel prices (particularly in areas where fuel sources can be manipulated by an incumbent utility or its affiliates), and how maintenance schedules for generation and transmission are timed in the market. These monitoring functions are rendered especially crucial by the fact that the owners of the bulk of generation resources in each transmission control area are part of the same holding company structure as the owners of the transmission assets (except that Exelon's subsidiary owns only approximately 40% of the generating resources within Commonwealth Edison's control area).

**Q4. Explain the state's role in overseeing operation of the transmission grid in the state and the extent to which public power or municipal power transmission systems are integrated into this effort. What is the relationship between the state's role and the Federal Energy Regulatory Commission's role in transmission system operation in the state?**

The major Illinois utilities have performed and received ICC approval for seven-factor test filings pursuant to FERC Order 888 to delineate between transmission and distribution facilities. Unbundled interstate transmission of electric energy sold at retail is considered FERC jurisdictional. Bundled retail sales of electric energy, unbundled local distribution service, unbundled retail sales of electric energy, and the facilities related to each of the above, are considered to fall under the jurisdiction of the State.

However, rate jurisdiction does not reveal the entire picture of ICC authority concerning transmission. For example, the ICC has expansive authority to ensure delivery reliability. In addition, the ICC has statutory siting and certification authority for transmission facilities.

Municipals and public power systems are not under state rate jurisdiction in Illinois.

**Q5. Do firms that have provider of last resort or default service obligations (formerly native load obligations in the regulated environment) receive preferential transmission treatment? If so, how does this affect wholesale electric power competition?**

As explained above (Q5/Retail Supply Issues), the Illinois General Assembly placed the supplier of last resort obligation directly on the incumbent electric utilities. The utilities' supplier of last resort obligation is discharged through the provision of bundled retail sales service. Currently, the transmission component of bundled retail sales service is not taken pursuant to FERC tariffs. There is no universal agreement that this situation translates directly into a conclusion of "preferential transmission treatment." Indeed, some contend that this situation is necessary to ensure reliable service to retail native load customers. However, when substantial amounts of transmission capability are retained outside the otherwise-applicable open access transmission tariff, opportunities are created for an electric utility serving bundled retail load to use transmission in a way that benefits its, and its affiliates', power sales and power trading business. Competitive wholesale power markets are harmed to the extent that a transmission provider takes advantage of these discriminatory opportunities.

**How and by whom should retail sales of bundled transmission services (i.e., retail sales of both energy and transmission services) and retail sales of unbundled transmission be regulated? If by more than one entity, how should regulation be coordinated?**

Currently, jurisdiction over the transmission component of bundled retail sales lies with the States. Jurisdiction over most other uses of the transmission system appear to be FERC-jurisdictional. Such a bifurcated approach to transmission jurisdiction will continue to make it difficult to establish the conditions to support broad regional power markets. A bifurcated approach to transmission jurisdiction results in inefficient transmission use which leads to less liquidity in transmission markets. As explained further above, preservation of native load preference creates opportunities for utilities to act discriminatorily. Ultimately, the interstate nature of transmission service and the fact that competitive markets can only be fostered over broad geographic regions may well militate in favor of greater centralization of transmission jurisdiction. Absent the development of regional government organizations to perform this function, FERC remains the only other logical candidate to perform this function.

**What should the state's role be in overseeing wholesale transmission reliability?**

Working with the NERC, the regional reliability councils, and other reliability organizations, states should retain expansive authority to oversee delivery reliability. However, parochial interests should not be permitted to stand in the way of efficient system operation.

**Q6. To what extent did the state identify transmission constraints affecting access to out-of-state or in-state generation prior to the start of retail competition?**

In retrospect, greater coordination between the actions of federal and state governmental entities would have been useful in the identification and resolution of issues related to transmission constraints. The ICC is concerned that insufficient attention was devoted to the detrimental effects of transmission constraints on power markets before the introduction of wholesale open access by the FERC. The need to remedy those constraints is made all the more crucial by the concentration of generation and transmission assets in the same owners described above. The ability to import power from outside the state mitigates, to some extent, generation ownership concentration within the state. Transmission limitations reduce the strength of this mitigating effect. If generation ownership is concentrated and transmission import limitations are binding, conditions will not be conducive to effective generation competition. Market power in generation can be leveraged by monopoly practices in transmission.

**Is the state capable of remedying these transmission constraints, or is federal jurisdiction necessary?**

With respect to transmission constraints outside of Illinois, there is little the ICC, acting alone, can do about them. With respect to transmission constraints within the state, the ICC believes it has authority to address them, at least under some circumstances. In keeping with the theme noted above in the answer to the second component of Q5, however, a centralized regulatory approach that operates on a regional or national level may well be the most effective way to create an efficient transmission system that will support the transparent wholesale market in electricity that retail direct access requires.

**How do the rationales for federal jurisdiction over electric power transmission siting compare to the reasons underlying federal jurisdiction over the siting of natural gas pipelines?**

The arguments in favor of federal jurisdiction over interstate transmission siting are as strong or stronger than are the arguments supporting federal jurisdiction over interstate natural gas pipeline siting.

**Q7. How have state siting regulations for new generation and transmission facilities been affected by the onset of retail**

**competition? Has new generation siting kept pace with demand growth in the state? If not, why not? Is federal jurisdiction necessary for siting of electric power generation facilities? Has the state actively monitored and reported the relationship between in-state capacity and peak demand in the state? What incentives do suppliers have to maintain adequate reserve capacity? What are the ways to value capacity in competitive markets? Is reserve sharing still important in competitive markets? Do other institutions/market processes provide a reasonable substitute for reserve sharing?**

The language in the sections of the Illinois Public Utilities Act addressing generation and transmission facilities siting was not explicitly changed by the introduction of retail direct access in the Electric Service Customer Choice and Rate Relief Law of 1997. See, Article VIII of the PUA.

The ICC has no authority to “order the construction, addition or extension of any electric generating plant unless the public utility requests a certificate. . .” Also, the ICC has no authority over IPP or unregulated affiliate generation siting or construction. Certain government entities such as the state Environmental Protection Agency, the Federal EPA, and local zoning boards have some authority over some aspects of generation construction.

With respect to ICC authority to require new transmission construction, see the response to Q6 above in this section.

Most of the new generation, in the form of gas-fired generation, has concentrated on providing peaker support to the grid, which has been in short supply. Based on market concentration levels and the pattern of ownership, more generation at all levels would improve the potential wholesale market situation in Illinois when long-term contracts held by incumbent utilities expire.

At present, there are no specific administrative or statutory incentives for suppliers to maintain adequate generation supply reserve capacities. The ICC informally monitors proposals for new generating plant construction in Illinois. However, the ICC undertakes no exhaustive or detailed review concerning the relationship between “in-state capacity and peak demand in the state.”

The utilities have the responsibility of providing reliable service to their bundled service customers and, because of plant sales or spin-offs, they can effectively do this only through purchasing power from their affiliates and the IPPs. The only incentive to build new generation in Illinois will be from price signals sent from Retail Electric Suppliers (RESs) and the utilities as they

seek to provide reliable service to bundled customers through contract negotiation and spot price purchases.

**Q8. Since the start of retail competition, what has been the rate of generation plant outages (scheduled and unscheduled)? To what extent has the state monitored these outages and examined their causes?**

Illinois suffered forced outages of several large nuclear plants in 1997-98. Indeed, these forced outages may have contributed to the price spikes experienced that summer. Currently, with the exception of one plant that shut down permanently, the other plants are running and appear to be running well. However, Illinois does not monitor all plant outages and does not exhaustively examine their causes. Daily outage monitoring would be more necessary (to prevent market supply manipulation) if Illinois' retail access program relied more heavily on spot transactions for daily supply reliability.

### **Other Issues**

**Q1. What measures has the state taken to make customer demand responsive to changes in available supply? Has the state provided utilities incentives to make customers more price responsive? Has the state moved away from average cost pricing? What effect have these measures had on demand and on demand elasticity?**

Illinois electric utilities have had interruptible programs in place for several years. The terms of these programs were approved by the ICC. With the new freedom to implement experimental programs pursuant to Section 16-106 of the Act, the three largest Illinois utilities have, on their own initiative, implemented curtailable programs over the last few years. The terms of these programs, and the customers to which they are applicable, were decided by the utilities and were not subject to the approval of the ICC.

**Q2. Has the state provided mechanisms and incentives for owners of co-generation capacity to offer power during peak demand periods? Has the state identified, reported, and facilitated development of pumped storage facilities or other approaches to arbitraging between peak and off-peak wholesale electricity prices?**

Illinois has yet to provide any mechanisms or incentives for owners of co-generation capacity to offer power during peak demand periods. Illinois has not identified, reported, or facilitated the development of pumped storage facilities to arbitrage between peak and off-peak wholesale electricity prices. Without real-

time price signals to customers, it would be difficult to implement a mechanism that is efficient and non-distortionary.

**Q3. What issues have arisen under retail competition that have required cooperation or coordination with other states? What approach was taken to securing this cooperation or coordination? Are there other issues requiring cooperation that have not yet been addressed? Which of these issues are the most significant?**

The ICC has been very active with other states in the region in participating in the development of regional transmission organizations. The ICC has also been actively engaged with other states in the region as the regional reliability organizations evolve in response to industry change. The ICC expects that these multi-state collaborations will continue and increase and expand as more and more reliance is placed on regional competitive markets, rather than traditional regulation, as the paradigm to protect retail electric consumers.

**Q4. How prevalent is the use of distributed resources (e.g., distributed generation) within the state? What barriers do customers face to implementing distributed resources?**

Under current rules, the use of self-generation can result in the imposition of transition charges on the portion of the demand removed from the grid. Any power generated from self-generation capacity built after January 1, 1997 may be subject to these transition charges. This provides customers with a distorted price signal regarding the economic implementation of distributed generation. The ICC is currently informally investigating distributed generation and ways to remove the current barriers to entry. Current barriers to entry for distributed resources include non-uniform, complicated, and costly interconnection tariffs more suitable for larger projects like peaking units. Other barriers to the use of distributed resource development are the lack of tariffs that provide fair market valuation of the benefits that distributed resources can provide to the grid and other customers on the grid (real time, locational pricing of power would do this most efficiently), as well as the costs of utility metering and, where appropriate, telemetry costs.

**Q5. Which specific jurisdictional issues prevent state retail competition programs from being as successful as they might be?**

The interstate nature of transmission service is the principal factor that places the ultimate attainment of competitive power markets outside Illinois' sole control. For example, while the development and operation of a properly designed and appropriately constituted regional transmission organization in

the Midwest is indispensable for the working of competitive power markets, Illinois, acting alone, cannot bring such an organization into existence.

Secondarily, issues such as standardized business practices and standardized interconnection procedures would likely make Illinois' competitive retail program more successful.

Finally, given that Illinois has already embarked on the path toward generation supply competition, liquidity in those markets would likely be expanded if substantially more of the other states in the Midwest region were to pursue a similar competitive path.

**Q6. Which specific technological developments are likely to substantially affect retail or wholesale competition in the electric power industry that may alter the manner in which states structure retail competition plans? Why? What time frame is associated with these developments?**

No response.

**Q7. What are the lessons to be learned from the retail electricity competition efforts of other countries? Are there other formerly regulated industries in the U.S. (e.g., natural gas) that allow customer choice and provide useful comparisons to retail electricity competition? If so, what are the relevant insights or lessons to be learned?**

No response.

### **III. CONCLUSION**

As discussed above, the ICC has been working within the framework of the Electric Service Customer Choice and Rate Relief Law of 1997 to establish market conditions necessary for a successful retail competition program in Illinois. While there has been considerable effort expended thus far, issues and problems exist that, unless resolved, will prevent Illinois from realizing a truly competitive market for retail electricity. Some of these issues and problems are not within the authority of the ICC and will require the intervention of agencies with authority that transcends the state level. Some of these issues and problems will require further ICC commitment to work with neighboring states in the region.

The ICC appreciates the FTC's initiative to undertake this inquiry concerning various state retail competition programs. The ICC stands ready to work with the FTC, and with any other agency or entity, to advance the pro-competitive electric power market objectives described in the Illinois Electric Service Customer Choice and Rate Relief Law of 1997.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Randy Rismiller", is written over a horizontal line.

Randy Rismiller  
Manager, Federal Energy Program  
Energy Division  
Illinois Commerce Commission  
(217) 785-4046

April 11, 2001



**ILLINOIS COMMERCE COMMISSION**

April 11, 2001

Via Overnight Delivery

Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Comments Regarding Retail Electricity Competition  
Docket No. V010003

Dear Mr. Clark:

Enclosed please find the original and six hard copies of the Comments of the Illinois Commerce Commission in the above-captioned proceeding. The timing of the submission of these Comments is consistent with communications between the staffs of the Federal Trade Commission and the Illinois Commerce Commission.

If you have any questions, please do not hesitate to write or telephone me at (217) 785-4046.

Sincerely,

A handwritten signature in cursive script that reads "Randy Rismiller".

Randy Rismiller  
Manager, Federal Energy Program  
Energy Division  
Illinois Commerce Commission

cc: Michael Wroblewski  
John Hilke

Enclosure