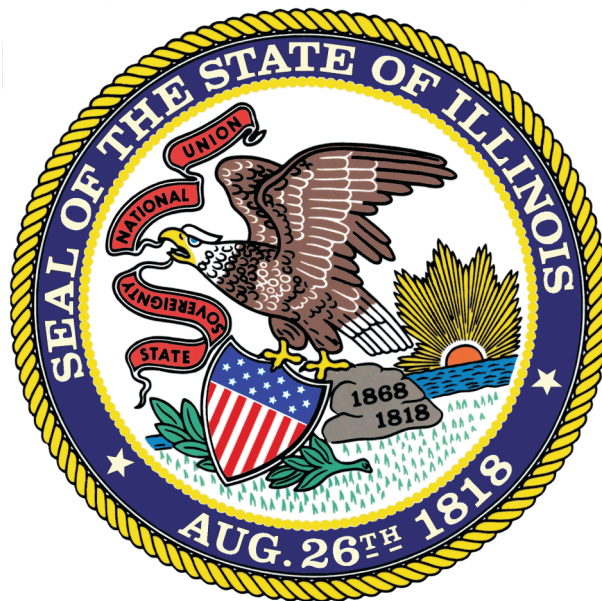


**OFFICE OF RETAIL MARKET DEVELOPMENT  
ILLINOIS COMMERCE COMMISSION**

**2009 ANNUAL REPORT**



**Submitted Pursuant to Section 20-110 of the  
Illinois Public Utilities Act**

**June 2009**



## ILLINOIS COMMERCE COMMISSION

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June 30, 2009

The Honorable Pat Quinn  
Governor

The Honorable Members of the Illinois General Assembly

The Honorable Members of the Illinois Commerce Commission

Please find enclosed the ICC's Office of Retail Market Development's annual report. This report is submitted in compliance with Section 20-110 of the "Retail Electric Competition Act of 2006" [220 ILCS 5/20-110]. Section 20-110 requires the Director of the Office of Retail Market Development to annually report specific accomplishments in promoting retail electric competition.

Sincerely,

A handwritten signature in black ink that reads "Torsten Clausen". The signature is written in a cursive style with a large, stylized initial 'T'.

Torsten Clausen  
Director, Office of Retail Market Development







## **I. Introduction**

Section 20-102 of the Retail Electric Competition Act of 2006 (“Retail Competition Act”) states that

“a competitive wholesale electricity market alone will not deliver the full benefits of competition to Illinois consumers. For Illinois consumers to receive products, prices and terms tailored to meet their needs, a competitive wholesale electricity market must be closely linked to a competitive retail electric market. To date, as a result of the Electric Service Customer Choice and Rate Relief Law of 1997, thousands of large Illinois commercial and industrial consumers have experienced the benefits of a competitive retail electricity market. Alternative electric retail suppliers actively compete to supply electricity to large Illinois commercial and industrial consumers with attractive prices, terms, and conditions.

A competitive retail electric market does not yet exist for residential and small commercial consumers. As a result, millions of residential and small commercial consumers in Illinois are faced with escalating heating and power bills and are unable to shop for alternatives to the rates demanded by the State's incumbent electric utilities. The General Assembly reiterates its findings from the Electric Service Customer Choice and Rate Relief Law of 1997 that the Illinois Commerce Commission should promote the development of an effectively competitive retail electricity market that operates efficiently and benefits all Illinois consumers.”

To further that goal, the Retail Competition Act created the Office of Retail Market Development (“ORMD”) within the Illinois Commerce Commission (“ICC”). Section 20-110 of the Retail Competition Act provides that on or before June 30 of each year, the Director of the ORMD submit a report to the Commission, the General Assembly, and the Governor, that details specific accomplishments achieved by the Office in the prior 12 months in promoting retail electric competition and that suggests

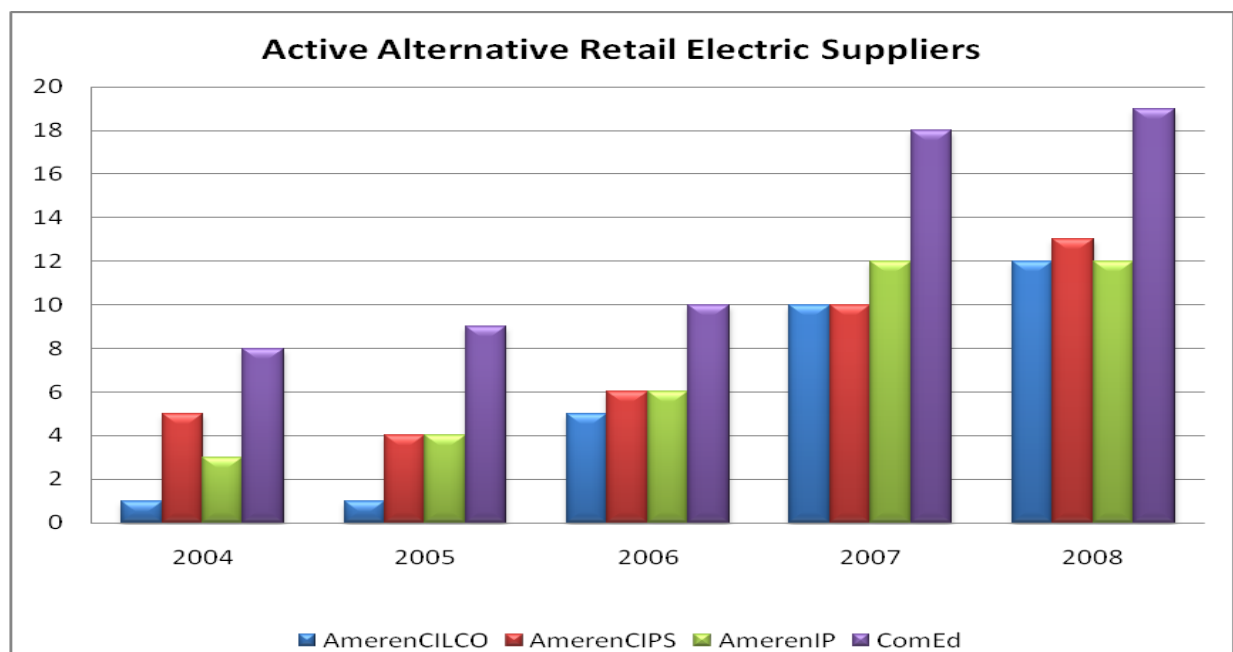
administrative and legislative action necessary to promote further improvements in retail electric competition.

## II. Recent competitive activity

### A. Number of certified and registered suppliers

Statewide, there are currently 37 alternative retail electricity suppliers (“ARES”) that have obtained ICC certification pursuant to Section 16-115 and eight ARES have obtained certification to serve residential and small commercial customers. However, in order to start offering retail electric service in Illinois, suppliers must also register with the electric utility and complete certain technical testing. Thirteen suppliers have completed the registration process with the Ameren Illinois Utilities (“AIU”) and eleven of those suppliers were actively selling electricity in the territory as of December 2008. In Commonwealth Edison’s (“ComEd’s”) territory, 24 suppliers have completed the registration process and 19 of those suppliers were actively selling electricity as of December 2008. Four of the active suppliers are either electric utilities or affiliates of electric or natural gas utilities.

The following shows the number of active ARES from 2004 to the end of 2008 by utility service territory:

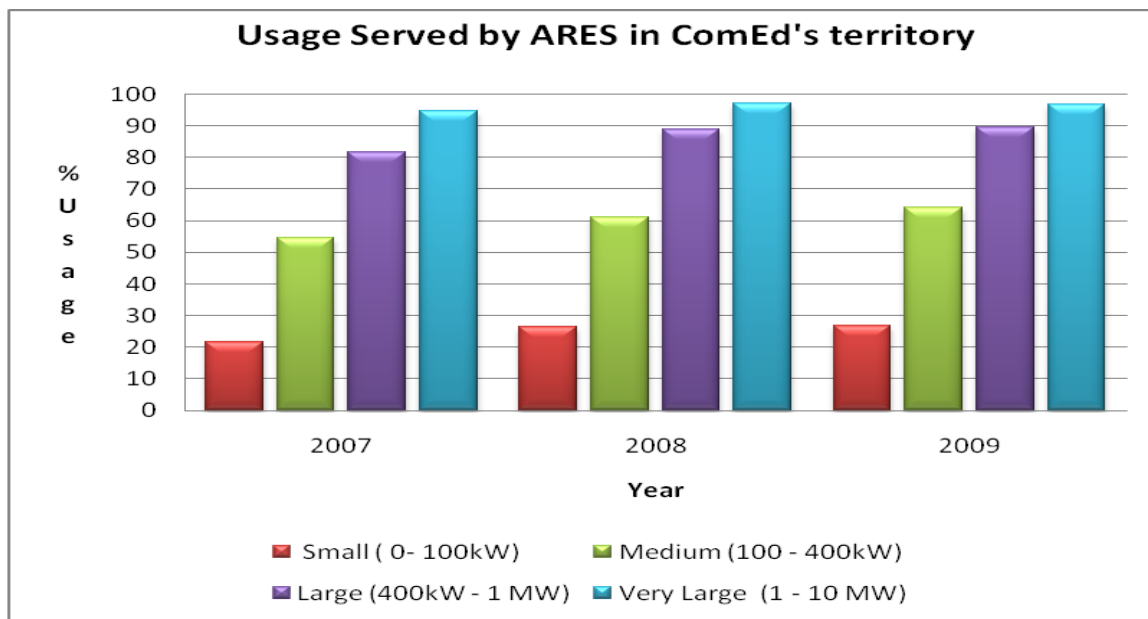


## B. Customer switching to alternative electric suppliers

More than half of the total electric consumption of ComEd's and AIU's customers is currently provided by alternative retail electric suppliers. The following provides detailed non-residential usage information for the four utilities.

### 1. ComEd

As of May 31, 2009, 53.1% of the total electric usage of ComEd's customers was provided by alternative retail electric suppliers. Breaking it down further, about 27% of the electric usage of ComEd's small commercial customers<sup>1</sup> and 64% of its medium commercial and industrial customers<sup>2</sup> was provided by ARES. For large customers<sup>3</sup> it was 90%, and for customers with a demand of over 1MW, the number was around 97%. Together, 75% of all non-residential load was provided by alternative electric suppliers as of May 31, 2009. The following shows the electric usage provided by ARES for the various commercial and industrial customer classes for the past three years<sup>4</sup>.



<sup>1</sup> Non-residential customers with demand up to 100kW.

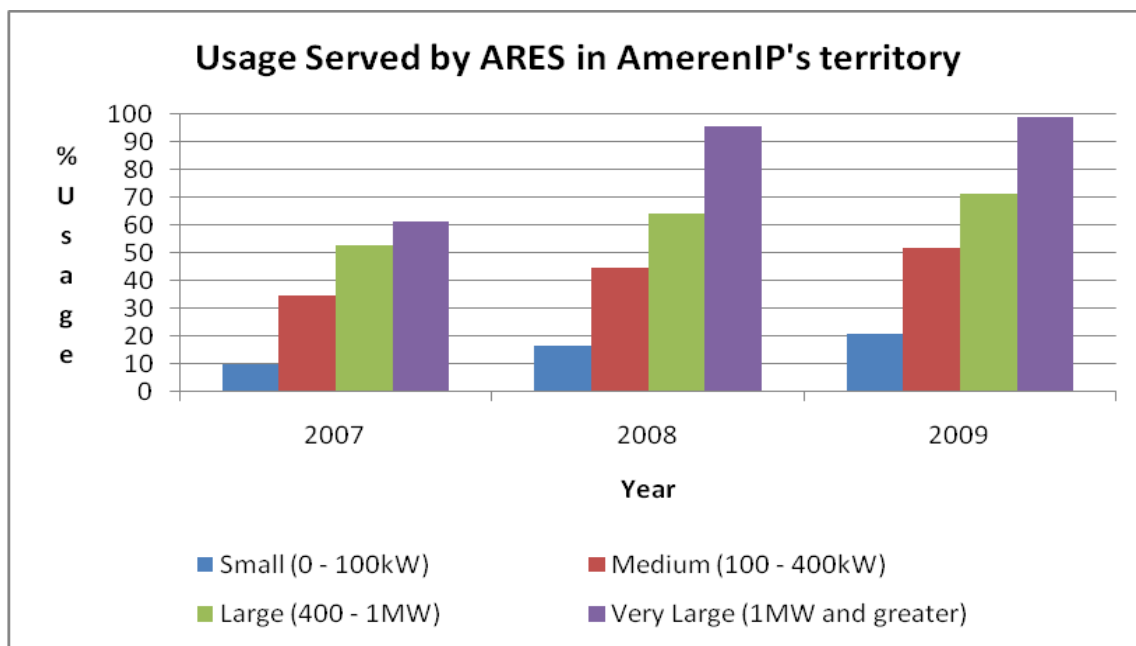
<sup>2</sup> Non-residential customers with demand between 100kW and 400kW.

<sup>3</sup> Non-residential customers with demand between 400kW and 1MW.

<sup>4</sup> Data as of May 31 of each year.

## 2. AmerenIP

As of May 31, 2009, 55.4% of the total electric usage of AmerenIP's customers was provided by alternative retail electric suppliers. About 21% of the electric usage of AmerenIP's small commercial customers and approximately 52% of its medium commercial and industrial customers was provided by ARES. For large customers it was 71%, and for customers with a demand of over 1MW, almost 99% of the usage was served by alternative electric suppliers. Together, 76.4% of all non-residential load was provided by alternative electric suppliers as of May 31, 2009. The following shows the electric usage provided by ARES for the various commercial and industrial customer classes for the past three years<sup>5</sup>.

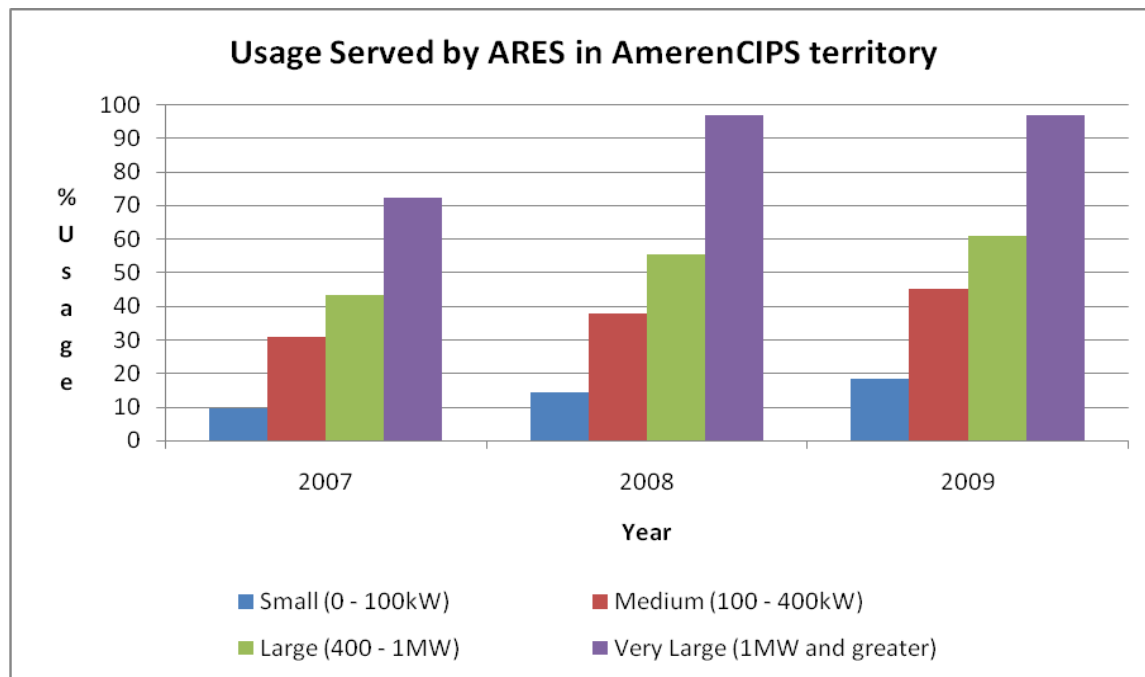


## 3. AmerenCIPS

As of May 31, 2009, 54.5% of the total electric usage of AmerenCIPS' customers was provided by alternative retail electric suppliers. About 19% of the electric usage of AmerenCIPS' small commercial customers and approximately 45% of its medium

<sup>5</sup> Data as of May 31 of each year.

commercial and industrial customers was provided by ARES. For large customers it was 61%, and for customers with a demand of over 1MW, almost 97% of the usage was served by alternative electric suppliers. Together, 73.7% of all non-residential load was provided by alternative electric suppliers as of May 31, 2009. The following shows the electric usage provided by ARES for the various commercial and industrial customer classes for the past three years<sup>6</sup>.

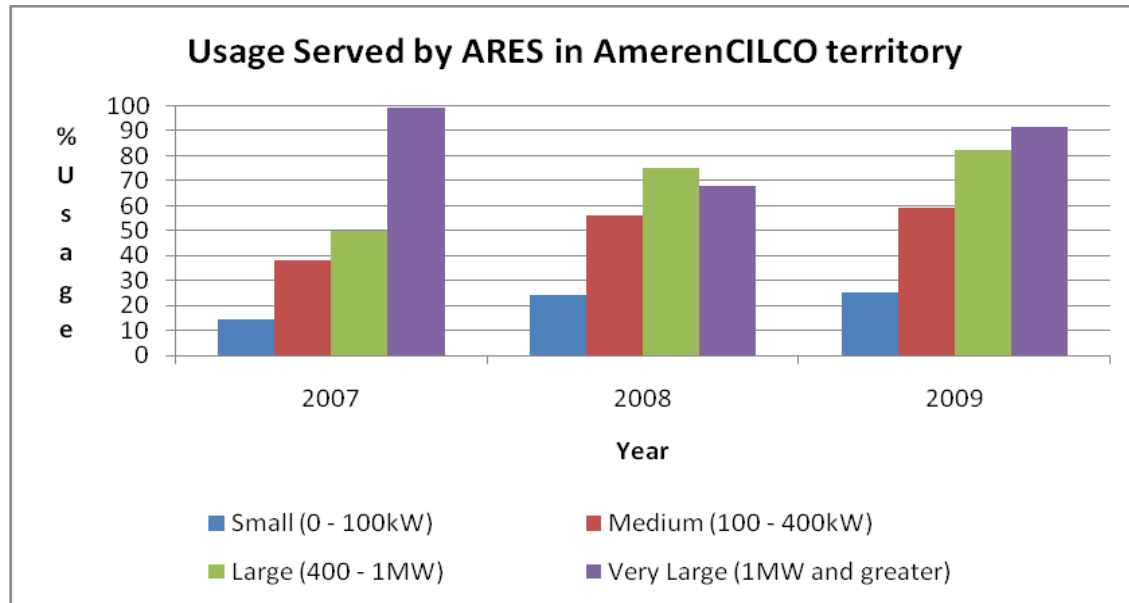


#### 4. AmerenCILCO

As of May 31, 2009, 51.9% of the total electric usage of AmerenCILCO's customers was provided by alternative retail electric suppliers. About 25% of the electric usage of AmerenCILCO's small commercial customers and approximately 59% of its medium commercial and industrial customers was provided by ARES. For large customers it was 82%, and for customers with a demand of over 1MW, almost 92% of the usage was served by alternative electric suppliers. Together, 74.2% of all non-residential load was provided by alternative electric suppliers as of May 31, 2009. The

<sup>6</sup> Data as of May 31 of each year.

following shows the electric usage provided by ARES for the various commercial and industrial customer classes for the past three years<sup>7</sup>.



## 5. Residential customers

Except for a limited pilot program undertaken by BlueStar Energy Services in ComEd's territory, no other ARES is currently offering retail electric service to residential customers.

### C. Competitive declarations

As of August 2007, new Section 16-113(f) of the Act declared the provision of electric power and energy to retail customers of ComEd and the Ameren Illinois Utilities with peak demands of at least 400 kilowatts to be a competitive service. The legislation resulted in ComEd's discontinuation of providing fixed-price bundled service to those customers after the end of the May 2008 billing period. As shown

<sup>7</sup> Data as of May 31 of each year.

above, the majority of the load for those customers (approximately 80%) had already been provided by alternative suppliers one year before ComEd's fixed-price bundled service option went away.<sup>8</sup> The law similarly provided that AIU does not need to provide fixed-price bundled service to that class of customers after the end of the May 2010 billing period. Hence, if experience from ComEd's territory is any indication, it can be expected that additional AIU customers with demands of at least 400 kilowatts will be switching to alternative suppliers in anticipation of the May 2010 deadline.

In addition, new Section 16-113(g) gives both ComEd and AIU the ability to declare the provision of power and energy to customers with peak demands of at least 100 kilowatts but less than 400 kilowatts to be competitive if certain conditions are met. ComEd filed a petition for competitive declaration and the Commission found that ComEd had satisfied the statutory requirements and therefore the provision of power and energy to those customers has been declared competitive as of November 2007<sup>9</sup>. One of the statutory conditions to receiving a competitive declaration is that at least 33% of the customers in that class receive service from an alternative supplier. At the time of the Commission's finding, approximately 43% of the customers were receiving service from an alternative supplier. The most recent data shows that number at approximately 64% for the 100-400 kilowatts demand category. As a result of the competitive declaration, after the end of the May 2010 billing period, the customers in that class who are still on ComEd's fixed-price service (approximately 6,400, or 35%, as of May 31, 2009) must choose to take supply service from the utility on an hourly-pricing basis or from an alternative retail electric supplier.

### **III. Public Act 95-0700**

In 2007 the General Assembly passed and the Governor signed Senate Bill 1299 into law as Public Act 95-0700. The requirements of Public Act 95-0700 are designed to

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<sup>8</sup> For customers with demand between 400 kilowatts and one megawatt.

<sup>9</sup> ICC Docket No. 07-0478.

remove certain barriers to competition for residential and small commercial customers in Illinois.

Two of the provisions of Public Act 95-0700 require ComEd and AIU to offer utility consolidated billing (“UCB”) and the purchase of receivables (“POR”). Under UCB, an ARES electronically submits its monthly customer charges for power and energy to the utility which then places those charges, along with its delivery charges, on one single bill to the customer. Under POR, an ARES is able to sell its receivables (the amount that customers owe to that ARES) to the utility at a discount. The POR requirement encourages alternative suppliers to offer their services to every utility customer rather than serve only those above certain credit thresholds, thereby furthering the statutory goal of an “effectively competitive retail electricity market that operates efficiently and benefits *all* Illinois consumers.”

#### **A. Workshops**

Together with the utilities, the ORMD held several workshops and conference calls to aid in implementing the requirements of Public Act 95-0700. These workshops were generally attended by numerous suppliers, both certificated and those considering seeking certification in Illinois, as well as consumer and governmental groups.

The initial focus of the workshop process has been on the technical implementation of utility-consolidated billing and the purchase of receivables (“POR”). This is primarily due to the fact that modifications to enrollment and billing processes and systems take a substantial amount of lead time. Both the utilities and the suppliers have an interest in ensuring that the computer systems and business processes are set up effectively in order to allow efficient day-to-day electronic communications between them.

To find areas where consistency between Ameren and ComEd’s practices is desired, a pre-existing technical working group has been re-activated to aid in the collaboration between technical experts from suppliers and the utilities. This technical working group (known as the Communications Protocol Working Group, or CPWG) was initially formed when retail choice was first allowed following the 1997 Electric Service Customer Choice and Rate Relief Law. The CPWG’s purpose is to break down

proposed business processes and communications protocols to a level of detail that will allow it to be translated into actual computer programming. Earlier this year, the group completed the development of the first version of the Illinois Electronic Data Interchange (“EDI”) Implementation Guides that will allow for the provision of UCB and POR. A significant amount of time and resources went into the development of these guides and all participants are to be commended for their efforts.

While Sections 16-118(c) (POR) and 16-118(d) (UCB) appear to be separate and distinct requirements, the workshop participants so far have focused on an offering that would combine the purchase of receivables with the important elements of utility consolidated billing. That is, if an ARES enrolls a customer with utility consolidated billing, the ARES then also has to sell the corresponding receivables to the utility at a discount. Because the POR provision in Section 16-118(c) is limited to customers with a demand of less than 400 kilowatts, this combination of utility consolidated billing and the purchase of receivables is therefore also limited to customers with a demand of less than 400 kilowatts.

## **B. Tariff Filings and Technical Implementation**

The Ameren Illinois Utilities filed tariffs in September 2008 to effectuate the offering of a combined UCB/POR service per Sections 16-118(c) and (d) of the Act. The Commission suspended the filed tariffs and the investigation is currently pending, with a statutory deadline of August 26, 2009 for a Commission Order. In the meantime, AIU started limited testing of the new UCB/POR functionalities with suppliers in June 2009. AIU currently estimates this testing to be completed by September 2009. ComEd had previously stated that its EDI testing of the UCB/POR changes with all suppliers would start in July 2009 and had anticipated a November 2009 roll-out date. After a four-month halt in the design and development phase in late 2008 and early 2009, prompted by cost recovery concerns, ComEd now estimates testing with the suppliers to begin in July 2010 in order to arrive at a roll-out date for UCB/POR service of December 2010. ComEd also stated that it would file the necessary tariffs for the UCB/POR service in late August or early September 2009.

### **III. Additional Consumer Protections and Education**

In August 2008, the Office of Retail Market Development put out a request for comments to interested parties on a wide range of topics associated with a competitive retail electricity market. As a result of the responses received, the ORMD compiled a proposed set of additional requirements for retail electric suppliers. The so-called Straw Man proposal was circulated to parties participating in the implementation of Public Act 95-0700 in December 2008 and posted on the ICC's website with a request for comments. Two rounds of comments have been received and significant time has been spent discussing the requirements of the Straw Man at in-person workshops and conference calls. The comments and input received from interested parties have been highly constructive. While there appears to be agreement on much of the proposal, some items remain contested. Below are descriptions of the items found in the proposed additional requirements for retail electric suppliers.

#### **A. Applicability**

The ORMD proposes that most of the following proposed requirements be applied to residential customers and small commercial customers as defined in Section 16-102 of the Public Utilities Act as those who consume no more than 15,000 kilowatt-hours of electricity annually. The exceptions to this applicability would be the training of ARES sales agents, records and retention availability and enforcement provisions, which we recommend being applicable to all customers.

#### **B. Marketing Practices / Enrollment**

The Straw Man includes specific requirements for the training of ARES sales agents to require agents selling retail electric supply products to be knowledgeable about the relevant statutory and regulatory requirements in Illinois. The sales agents should also be familiar with the supplier's products and services, including rates, potential termination fees, and the customer's right to cancel. In the case of in-person Marketing, the ORMD proposes that sales agents be required to produce identification, which a) prominently displays in reasonable size type face the full name of the sales

agent, b) displays a photograph of the sales agent and c) depicts the legitimate trade name and logo of the ARES they are representing. This identification should be presented as soon as possible and prior to describing any products or services offered by the ARES.

Additionally, the ORMMD recommends specific disclosure requirements for all marketing channels, including in-person marketing, telemarketing, direct mail and on-line marketing. This should reduce confusion as to who is soliciting the customer and it highlights the most important terms and conditions of the product being offered. The Straw Man proposes that the uniform disclosure items be read to the customer when solicitation occurs in-person or by telephone. Also, if a fixed bill product is being offered, the sales agent should explain that the fixed bill amount is for supply charges only and that it does not include the delivery service charges and applicable taxes and thus, it is not the total monthly amount for electric service. When soliciting in-person or by telephone, the ARES sales agent should also require the customer to verbally acknowledge that he or she understands the uniform disclosure statement.

For in-person marketing situations where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent, or where the customer or a third party informs the sales agent of this circumstance, the proposal would require the sales agent to either find a representative in the area who is fluent in the customer's language to continue the marketing activity, use an interpreter at the premise, or terminate the in-person contact. When solicitation is done by telephone and it is apparent the customer's English language skills are insufficient to allow the customer to understand, the sales agent must immediately transfer the customer to a representative who speaks the language if such a representative is available or terminate the call.

Similar to recent legislation for alternative retail gas suppliers, we recommend a "Do Not Market List" to be maintained by the utility company and provided to the alternative suppliers to prevent marketing to those customers who do not wish to be solicited for electric supply services. The ORMMD also recommends that an ARES retain verifiable proof of authorization to change suppliers for each customer for a minimum of two years or the length of the sales contract, whichever is longer. Authorization records should be provided by the ARES within seven business days after a request is

made by the Commission or Commission Staff. The ARES should also retain a copy of the customer's sales contract for the duration of the contract and for two year thereafter, and within seven business days of the customer's request provide the customer a copy via e-mail, U.S. mail or facsimile.

**C. Rescission / Deposits / Early Termination and Automatic Renewal of Contract**

Upon receipt of an enrollment request from a supplier, the utility should send written notification of such an enrollment request to the customer. This notice should include both the supplier's information and the period of time during which the customer can rescind the contract without penalty by calling either the utility or the alternative supplier. We also propose that any agreement containing an early termination fee disclose the amount of the early termination fee or the formula for calculating such fee. In addition, it should provide the customer with the opportunity to terminate the agreement without any termination fee within 10 business days after the date of the first bill issued to the customer for products or services provided by the ARES. The ORMD further recommends that suppliers utilizing the purchase of receivables option pursuant to Section 16-118(c) not be allowed to require a customer deposit.

The Straw Man proposes a separate notice of contract expiration, allowing enough time for customers to shop for a new supplier. Renewal offers should include contract terms and a full description of the renewal offers available, what action the customer needs to take by what date, and that failure to accept the renewal offer or to switch to another supplier by a specified date will revert the customer to the utility's bundled service for 12 months. If a supplier utilizes a contract with an automatic renewal clause, the supplier should be required to renew the contract consistent with the contract's renewal clause and the statutory requirements for automatic contract renewal. If the renewal pricing is different from the original term, this must be communicated to the customer in advance of the renewal term taking effect.

#### **D. Uniform Disclosure Requirements**

The ORMD proposes the mandatory disclosure of 15 different items prior to enrolling a customer for electric service, regardless of the form of marketing used. The uniform disclosure requirements are aimed at informing the consumer what the product is, who is selling the product, how to reach the supplier and what the customer can expect with regard to their bill. We propose that suppliers be required to state that the ARES is an independent seller of electricity and is not representing or acting on behalf of the electric utility, governmental bodies or consumer groups. Also proposed is a statement that the utility will continue to deliver the electricity to the customer's premise and will continue to respond to any service calls and emergencies. The uniform disclosure statement should also inform customers that they will receive written notification from the utility confirming the switch of suppliers. If a product by an ARES guarantees savings, the ARES should be required to provide a plain language description of the conditions that must be present in order for the savings to occur. For products where a customer's charges are a fixed amount per billing period regardless of the market price for electricity or the customer's electric consumption during the billing period, the Straw Man requires disclosure of the billing period covered as well as a statement that the fixed bill amount is for supply charges only and that it does not include delivery service charges and applicable taxes.

#### **E. Dispute Resolution / Consumer Complaint Reports**

The ORMD proposes that alternative suppliers be required to provide the Commission Staff a sample of its bill format (if it bills the customer directly), standard customer contract and customer complaint and resolution procedures. Similar to the recent natural gas supplier legislation, we propose that an ARES not bill for disputed amounts if the ARES has been provided notice of such disputes. When the dispute is not resolved to the customer's satisfaction, the supplier should inform the customer of the right to file an informal complaint with the Commission and provide contact information. While the pending dispute is active at the Commission, an ARES (or the electric utility in the case of utility-consolidated billing) may bill only for the undisputed amount until the Commission has taken final action on the complaint.

Additionally, we propose to prepare a quarterly summary of informal and formal ARES complaints received and to post the summaries to the ICC website.

## **F. Enforcement**

The Straw Man also contains a proposal to add expedited enforcement procedures for suppliers that repeatedly violate statutory and/or regulatory requirements. The ORMD's proposed enforcement provisions include a variety of potential remedies ordered by the Commission in addition to revoking a supplier's certificate of service authority. In determining the appropriate consequence for a violation, the Commission should take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the violation, as well as the ARES's history of previous violations. Consequences for violating one or more of the statutory and/or regulatory mandates could include one or more of the following restrictions on an ARES's opportunity to sell electricity to retail customers:

- (a) Suspension from a specific Commission approved retail program in either a specific utility service territory or all of Illinois;
- (b) Suspension of the ability to enroll new customers in either a specific utility service territory or all of Illinois;
- (c) Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to Commission Staff for review;
- (d) Reimbursements to customers who did not receive savings promised in the ARES's sales contract/uniform disclosure statement or substantially demonstrated to have been included in the ARES's marketing materials or to customers who incurred costs as a result of the ARES's failure to comply with the requirements set forth above;
- (e) Release of customers from sales contracts without imposition of early termination fees.

It should be noted that the proposed additional enforcement provisions have not yet received the same level of discussion as the rest of the ORMD's proposed requirements for retail electric suppliers.

### **G. Education in the Ameren Illinois Utilities Service Territory**

Additional customer education is a very important part of the development of an effectively competitive retail electricity market for residential and small commercial customers. Given the difference in the timing of the availability of utility-consolidated billing and the purchase of receivables between ComEd and the AIU's service territory, it makes sense to initially focus on additional customer education in the service territories of the three Ameren Illinois Utilities. In addition to planned activities by AIU, such as modifying and expanding retail choice information on its website, including retail choice information in bill messages and possibly bill inserts, informing customers about retail choice when customers call the utility for non-emergency purposes, evaluating changes to its bill format, in addition to educating legislators and their staff, the ORMD believes there is a role for the Commission as well.

While the current budget situation makes funding for ICC consumer education expenses very uncertain, the ORMD plans to implement several low cost ways to inform AIU customers about retail choice. Such items include ICC press releases, adding information to the ICC's Plug-In Illinois website, developing and creating public service announcements with the help of the Illinois Office of Communication & Information, as well as creating and maintaining a standardized list of currently available retail electric service offers for residential customers. If ICC consumer education funding becomes available, the ORMD proposes to update the printed Plug-In Illinois materials, provide resources at RES/energy fairs, expos, and similar events, speaking engagements organized by community organizations and civic groups, as well as purchasing print, online, and radio advertising in the relevant market areas.

### **IV. Municipal Aggregation**

On June 11, 2009, the General Assembly sent HB0722 to the Governor. This proposed legislation amends the Illinois Power Agency Act by providing for the aggregation of electrical load by municipalities and counties. It would allow municipal corporate authorities or county boards to adopt an ordinance under which it may aggregate residential and small commercial retail electrical loads located within their

jurisdiction and solicit bids to enter service agreements for the sale and purchase of electricity and related services and equipment.

The bill requires the corporate authorities of a municipality or county board to submit a referendum to its residents to determine whether or not the aggregation program shall operate as an opt-out program for residential and small commercial customers prior to the adoption of an ordinance for the aggregation of these loads. The Illinois Power Agency is required to furnish without charge a list of all supply options available to the customers in a format that allows comparison of prices and products, and provide assistance to municipalities, counties or associations completing the plan and bidding process.

The legislation requires that the load aggregation plan provide for universal access to all applicable residential customers and equitable treatment of applicable residential customers and that the plan describe demand management and energy efficiency services to be provided to each class of customers. The ORMD is encouraged by this legislative initiative to provide further incentives for alternative retail electric suppliers to offer service to residential customers.

## **VI. Suggested Administrative and Legislative Action**

It is our recommendation to create and implement the additional consumer protections described above. We have been informed that the Commission lacks the explicit statutory authority to establish these requirements through additional administrative rules. As a result, we recommend that the General Assembly either a) amend the Public Utilities Act to provide the Commission with explicit rulemaking authority to establish rules in line with the proposed requirements discussed above, or b) turn the recommended requirements into statutory mandates.

In addition, the ORMD supports eliminating or modifying the 24-month minimum enrollment requirement found in Sec. 16-103(d) of the Act. The minimum enrollment provision, applicable only to residential and small commercial customers who return from delivery services to the electric utility's bundled service, appears to be conflicting with the goal of developing "an effectively competitive retail electricity market that operates efficiently and benefits all Illinois consumers." An alternative to

eliminating the minimum enrollment requirement would be to reduce the current 24 months to 12 months or, upon returning to the electric utility's bundled service, to allow for a 2 month "grace period" during which a customer would have the opportunity to select a different retail electric supplier.

