

# ***STUDENT ARTICLES***

## **A Discussion of the Deregulation of the Energy Industry in Illinois and its Effects on Consumers**

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### **I. The Deregulation Movement**

Deregulation in the utility market began in 1996 in an effort to increase competition and lower energy prices to consumers. However, more than a decade after the federal government attempted to create competition in the electricity generation industry the market has not produced the desired rate decreases.<sup>1</sup> Still, certain states, including Illinois, have experienced rate decreases during the past ten years of deregulation. These decreases were due to rate caps or freezes by state agencies that have largely remained in control of electricity rates. Consequently, a genuine competitive market for the generation of electricity failed to emerge from deregulation.<sup>2</sup> Instead, many states have either suspended or delayed establishing a competitive system while others have attempted to either purchase investor-owned utilities or replace utilities with municipal power.<sup>3</sup>

Prior to 1996, regulated utilities owned and operated power plants and were in the business of both generating and distributing

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<sup>1</sup>David Cay Johnston, *Competitive Era Fails to Shrink Electric Bills*, N.Y. TIMES, Oct. 15, 2006, Section 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

electricity to their customers.<sup>4</sup> Currently, a decade after the deregulation movement began, in many states, including Illinois, regulated utilities no longer generate their own electricity, but purchase power from electricity generating companies.<sup>5</sup> The regulated utilities then deliver the electricity to their customers for a delivery charge, which in Illinois, is set by the Illinois Commerce Commission (“ICC”).<sup>6</sup> The price of electricity was to be set by market forces that resulted from competition to supply energy distributors with electricity.<sup>7</sup> However, in most states the number of power producers is relatively small, and a genuine market has not developed for the wholesale price of electricity.<sup>8</sup>

The fact that energy prices have increased in many states despite deregulation has caused many to look into the system to identify potential problems. One identified problem is that utilities delivering electricity have been purchasing electricity from generating companies that are related entities at prices far from the lowest available.<sup>9</sup> As a result, the related entity has a ready market for the electricity that it generates, while the utility passes along the additional cost of purchasing energy to its customers. The related entity then reports inflated profits earned by the sale of its generated electricity, and the utility reports inflated revenues earned through the distribution of the higher priced electricity. A second problem has recently been discovered by the Federal Energy Regulatory Commission, which has concluded that companies producing electricity have been limiting the supply in order to drive energy prices up during peak energy use times.<sup>10</sup> Finally, over the past decade several states, including California, New Jersey and most recently Illinois, have resorted to power

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* See also Robert Manor, *Auction Hints of Energy Hikes Illinois Monitors Jersey Power Sale*, CHI. TRIB., Feb. 11, 2006; Jeffrey Tomich, *Illinois Lawmaker Seeks Electric Rate Freeze*, ST. LOUIS POST-DISPATCH, Feb. 21, 2006, at C10.

<sup>6</sup> The ICC was established by the Illinois Public Utility Act. See 220 ILL. COMP. STAT. 5/2-101 (2007). The ICC is given the authority to establish or alter rates or charges related to public utilities so long as the rates are just and reasonable. See 220 ILL. COMP. STAT. 5/9-201(b)-(c) (2007). The information requirements for filing an increase in rates for electric utilities with the ICC are set out at ILL. ADMIN. CODE tit. 83, §285.310 (2007). See also Johnston, *supra* note 1.

<sup>7</sup> See Johnston, *supra* note 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

auctions in order to procure electricity to be delivered to consumers.<sup>11</sup> Recently, the energy auction process has been questioned as to whether it results in energy prices that are truly determined by the open market.<sup>12</sup>

The purpose of this article is to discuss energy deregulation in Illinois and the results of the recent power auction. This article will then discuss the effect of the power auction on consumers in 2007 and subsequent years. A variety of options are presented, some from the utilities themselves and others from the Illinois General Assembly, as alternatives for consumers who are overly burdened by the results of the power auction. Next, this article will look at the financial condition of Illinois' largest energy providers; Commonwealth Edison ("ComEd") and AmerenCIPS, AmerenCILCO, and AmerenIP (collectively "Ameren"). Finally, demand pricing will be discussed as a potential way for consumers to keep energy costs low in the future.

## II. Deregulation in Illinois - the Transition Period

Illinois was a part of the deregulation movement beginning in 1997 when the Illinois General Assembly passed the Electric Service Customer Choice and Rate Relief Law.<sup>13</sup> This law created the opportunity for Illinois residents and businesses to choose their power supplier.<sup>14</sup> The law also restructured Illinois' electric power industry.<sup>15</sup> During that time most of the utilities either spun-off their generating business or sold their power plants and entered into long-term supply contracts.<sup>16</sup> As a result, companies in Illinois, such as ComEd and Ameren, no longer generated any power, but rather purchased power on the wholesale market to deliver to their customers.<sup>17</sup> The overall result was that Illinois electricity rates were cut by approximately 20

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<sup>11</sup> See Manor, *supra* note 5; Johnston, *supra* note 1.

<sup>12</sup> Johnston, *supra* note 1. In California, the 2000 auction was manipulated such that prices were in excess of what the un-manipulated market would have warranted.

<sup>13</sup> 220 ILL. COMP. STAT. 5/16-101 - 5/16-130 (2007).

<sup>14</sup> 220 ILL. COMP. STAT. 5/16-119 (2007).

<sup>15</sup> 220 ILL. COMP. STAT. 5/16-101 - 5/16-130 (2007).

<sup>16</sup> Illinois Commerce Commission, Post 2006 Initiative: Final Staff Report to the Commission, at 1 (Dec. 2, 2004) available at <http://www.icc.illinois.gov/docs/en/041203ecPostRptFinal.pdf> [hereinafter *ICC Staff Report*].

<sup>17</sup> See Manor, *supra* note 5; Tomich, *supra* note 5.

percent and frozen in an effort to encourage competition.<sup>18</sup>

The hope was that during the ten-year rate freeze, which concluded on January 1, 2007, competition would result in an increase in options for Illinois energy customers.<sup>19</sup> Therefore, the rate freeze period was meant to act as a transition period from a completely regulated industry to a market-based industry.<sup>20</sup> However, increased competition did not result and most of the state's electricity continued to be generated and delivered by the same players, ComEd, Ameren, and related entities of the two.<sup>21</sup> Despite the efforts of the state legislature, Illinois still has only two major electric utility companies that service Illinois residences and businesses: Ameren, which serves approximately 1.2 million customers in central and southern Illinois, and ComEd which serves 3.7 million customers across northern Illinois.<sup>22</sup> Because the transition period did not produce the desired results, the ICC was left with trying to determine how to price electricity and how Illinois utilities would procure energy to distribute after the transition period ended.<sup>23</sup>

In an effort to determine possible solutions to the questions raised during the transition period, ICC staff issued a report to the ICC on December 2, 2004.<sup>24</sup> The report included recommendations as to how electricity delivered by the Illinois utilities should be priced, as well as how the utilities should procure the energy they distribute after the end of the transition period.<sup>25</sup> The ICC staff recommended a vertical tranche auction for utilities like Ameren and ComEd; large utilities that lacked the capacity to generate their own

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<sup>18</sup> Manor, *supra* note 5; Ryan Keith, *Illinoisans Brace for Electric Rate Increase in 2007*, AP ALERT – POL., Dec. 31, 2006, at 1.

<sup>19</sup> See Keith, *supra* note 18, at 1.

<sup>20</sup> ICC Staff Report, *supra* note 16, at 1.

<sup>21</sup> *Id.*

<sup>22</sup> Kevin McDermott, *Utilities Run Ads Backing Rate Hike*, ST. LOUIS POST-DISPATCH, Nov. 26, 2006, available at 2006 WLNR 20467830 (stating that Illinois' two major electricity suppliers are Ameren and ComEd.). See also The number of ComEd's customers by region, <http://www.exeloncorp.com/ourcompanies/comed> (last visited Mar. 5, 2007); Ameren's Corporate Fact Sheet, [http://www.ameren.com/AboutUs/ADC\\_AU\\_FactSheet.pdf](http://www.ameren.com/AboutUs/ADC_AU_FactSheet.pdf) (last visited Mar. 5, 2007) (indicating that AmerenCILCO has 215,000 electric customers, AmerenCIPS has 400,000 electric customers, and AmerenIP has 625,000 electric customers).

<sup>23</sup> See ICC Staff Report, *supra* note 16.

<sup>24</sup> *Id.* at 1.

<sup>25</sup> *Id.* at 1-2.

power.<sup>26</sup> Under a vertical tranche auction, Illinois utilities would divide their load obligation, or energy requirements, for the year vertically into tranches, or slices, of energy.<sup>27</sup> For example, ComEd divided their load requirements into six categories where each category included customers with different characteristics and load, or usage, requirements.<sup>28</sup> The winning supplier and prices are then determined via an auction process.<sup>29</sup> Essentially, energy generators bid to supply the Illinois utilities with electricity at set prices, and the process continues until each utility's power need has been satisfied.<sup>30</sup> The products auctioned are the rights to supply utilities with their energy requirements for the year.<sup>31</sup>

### III. Illinois Power Auction

On February 25, 2005, ComEd filed a proposal with the ICC calling for a competitive energy procurement process.<sup>32</sup> ComEd's goal was to determine a procurement process that would accurately determine the market price of electricity to enable ComEd to provide electricity to its customers beginning on January 2, 2007 at just and reasonable rates.<sup>33</sup> ComEd advocated the use of annual energy auctions as a viable competitive procurement process.<sup>34</sup> On February 28, 2005, Ameren filed its proposal with the ICC in which it outlined an auction process to determine prices that would be passed on to customers after the conclusion of the transition period.<sup>35</sup> While the ICC

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<sup>26</sup> *Id.* at 10.

<sup>27</sup> *See Id.* at 11.

<sup>28</sup> *See* Illinois Auction, Rate Information, <http://www.illinois-auction.com/index.cfm?fa=gen.rate> (last visited Feb. 5, 2007).

<sup>29</sup> *ICC Staff Report*, *supra* note 16, at 11; *See* Illinois Auction, Auction Format, <http://www.illinois-auction.com/index.cfm?fa=gen.for> (last visited Feb. 5, 2007) [hereinafter *Illinois Auction*].

<sup>30</sup> Keith, *supra* note 18, at 1.

<sup>31</sup> *See Illinois Auction*, *supra* note 29.

<sup>32</sup> *See* Suspended Tariff Cover Letter for ComEd (Feb. 25, 2005), available at <http://www.icc.illinois.gov/e-Docket/> docket number 05-159 (last visited Mar. 5, 2007).

<sup>33</sup> *Id.*

<sup>34</sup> *See* Suspended Tariff Pages – Rider CPP for ComEd (Feb. 25, 2005), available at <http://www.icc.illinois.gov/e-Docket/> docket number 05-159.

<sup>35</sup> *See* Suspended Supplemental Information for Ameren (Feb. 28, 2005), available at <http://www.icc.illinois.gov/e-Docket/> docket number 05-160.

was considering the proposals, the Office of the Illinois Attorney General filed a lawsuit against the ICC on September 1, 2005 to prevent the ICC from approving a power auction.<sup>36</sup> However, despite the efforts of the Illinois Attorney General, on January 24, 2006, the ICC approved the use of a vertical tranche auction as a competitive procurement method.<sup>37</sup>

After the ICC approved the use of an auction, many lawmakers advocated an extension of the electricity rate freeze through the year 2010.<sup>38</sup> Chief among the supporters of a rate freeze extension was the Speaker of the Illinois House of Representatives, Michael Madigan.<sup>39</sup> Despite the efforts of the legislature to extend the rate freeze, the power auction took place beginning on September 5, 2006 and ending on September 8, 2006.<sup>40</sup>

The vertical tranche auction process adopted by Illinois was closely based on the annual auction method employed by New Jersey.<sup>41</sup> The Illinois power auction can be described as a descending clock auction where all the products, rights to supply either Ameren or ComEd with energy, are up for auction simultaneously.<sup>42</sup> Energy generators registered as bidders were then able to bid on the products in the auction.<sup>43</sup> At the beginning of each round of the auction, the Auction Manager announces a price for the products offered.<sup>44</sup> Prior to the beginning of the auction, the Auction Manager, in consultation with the utilities and ICC staff, determine the original maximum price offered.<sup>45</sup> Bidders then determine the number of tranches that

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<sup>36</sup> Press Release, Illinois Attorney General (Sept. 1, 2005), [http://www.illinoisattorneygeneral.gov/pressroom/2005\\_09/20050901c.html](http://www.illinoisattorneygeneral.gov/pressroom/2005_09/20050901c.html)

<sup>37</sup> See Order – Final for Ameren., at 105-06, (Jan. 24, 2006), available at <http://www.icc.illinois.gov/e-Docket/> docket number 05-160.

<sup>38</sup> Tomich, *supra* note 5.

<sup>39</sup> See *Id.*; John Chase & Rick Pearson, *House OKs Rate Freeze, but Chances Dim in Senate*, CHI. TRIB., Jan. 8, 2007, at 1.

<sup>40</sup> *Exelon, Ameren Units Lead in Illinois Auction*, ENERGY TRADER, Dec. 7, 2006, at 13 [hereinafter *Energy Trader Article*].

<sup>41</sup> Manor, *supra* note 5.

<sup>42</sup> See *Illinois Auction*, *supra* note 29.

<sup>43</sup> See *Id.*

<sup>44</sup> See *Id.*

<sup>45</sup> See Illinois Auction Rules, at 27 (May 15, 2006), available at [http://www.illinois-auction.com/resources/auction/Illinois\\_Auction\\_Rules\\_5-15.pdf](http://www.illinois-auction.com/resources/auction/Illinois_Auction_Rules_5-15.pdf). [hereinafter *Auction Rules*]

they will be able to provide at the set prices.<sup>46</sup> If excess tranches are bid during a round, meaning that the supply exceeds the demand, then the price for that product is reduced in the next round of the auction.<sup>47</sup> The Auction Manager reduces the price based on a given percentage of the previous price and announces the new price for each product in the next round.<sup>48</sup> Prices start high in the auction and as the supply bids exceed the demand, the price of electricity gradually decreases as the auction progresses.<sup>49</sup> The prices continue to drop until the supply equals the demand.<sup>50</sup> The results of the auction produced wholesale electricity prices of \$64.77/mwh for a 17-month contract for Ameren versus a wholesale price of \$63.96/mwh for a 17-month contract for ComEd.<sup>51</sup> The contracts that were awarded ranged from 17-month contracts to 41-month contracts with either Ameren or ComEd.<sup>52</sup> The wholesale prices for the contracts ranged from \$63.33/mwh to \$66.05/mwh.<sup>53</sup>

## IV. Effect of the Illinois Power Auction on Consumers

### A. Components of Consumer Utility Bills

The utility companies in Illinois do not make any money from the electricity that they buy from generators and then distribute to their customers.<sup>54</sup> The profits earned by utilities like ComEd result from a delivery fee which is independent from the cost of power.<sup>55</sup> The two main components of electricity bills are delivery costs and generation costs.<sup>56</sup> The delivery portion of the bill accounts for ap-

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<sup>46</sup> See *Illinois Auction*, *supra* note 29.

<sup>47</sup> See *Id.*

<sup>48</sup> See *Auction Rules*, *supra* note 45.

<sup>49</sup> See *Illinois Auction*, *supra* note 29.

<sup>50</sup> *Id.*

<sup>51</sup> *Energy Trader Article*, *supra* note 40.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Manor, *supra* note 5.

<sup>55</sup> *Id.*

<sup>56</sup> Jerri Stroud, *Ameren Gets OK for Rate Hike in Illinois*, ST. LOUIS POST-DISPATCH, Nov. 23, 2006, at D1.

proximately 20-30 percent of the total bill.<sup>57</sup> The remainder of the bill is generation costs from which the utilities do not profit, but simply pass on to customers in the price for energy. The delivery charge is set by the ICC. Utilities may present a case to the ICC for certain rate increases, at which time the ICC may either accept or deny any aspect of the delivery rate increase. Therefore, Illinois residents will be charged for any increases in the cost of energy resulting from the auction, as well as any additional increases in delivery charges approved by the ICC.

### **B. Increased Energy Prices to Consumers**

Immediately following the power auction, energy cost increases estimated to take effect on January 2, 2007 were 22-26 percent for ComEd customers and 40-55 percent for Ameren customers.<sup>58</sup> Both increases were directly attributable to the higher than expected cost of energy resulting from the power auction.<sup>59</sup> Increased cost estimates leading up to the beginning of 2007 were even more widespread. The Illinois utility estimates were lower than the estimates produced by consumer advocates such as The Citizens Utility Board (“CUB”) and the Office of the Illinois Attorney General. Ameren estimated that residential customers would face an increase of close to 55 percent beginning in January 2007, while the Office of the Illinois Attorney General estimated that increases could range from 28 percent to as high as 99 percent for Ameren customers.<sup>60</sup> For Ameren customers in the Metro East area as well as southern Illinois, a substantial part of the increased rate was due to a 32 percent increase in delivery charge approved by the ICC.<sup>61</sup> Despite the widespread increased cost estimates leading up to the beginning of 2007, the initial estimated ranges proved to be accurate.<sup>62</sup>

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<sup>57</sup> *Id.*

<sup>58</sup> Rebecca Smith, *Energy Auction in Illinois Will Lead to Jump in Rates for Customers*, WALL ST. J., Sept. 18, 2006, at A6.

<sup>59</sup> *Id.*

<sup>60</sup> Adriana Colindres, *ICC OKs Rate Phase-In Plan House Will Revisit Freeze on Electricity Prices When Session Opens in January*, ST. J.-REG. (Springfield, Ill.), Dec. 21, 2006, at 13.

<sup>61</sup> Stroud, *supra* note 56.

<sup>62</sup> John Chase & Monique Garcia, *Rate Hike Wary Get No Relief*, CHI. TRIB., Jan. 10, 2007.

### C. Arguments For and Against the Power Auction

Opponents of the auction argued, and still argue, that the two main utilities in Illinois, Ameren and ComEd, did not face sufficient competition for the auction to be valid.<sup>63</sup> After the release of the auction's actual results in the beginning of December 2006, many opponents of the auction found the results confirmed what they had feared all along; that Exelon, the parent company of ComEd, along with only a few other major players in the energy market, would be the electricity generators with the winning bids.<sup>64</sup> Sure enough, Exelon Generation won over a quarter (27.1 percent) of the tranches awarded at the auction while Ameren's wholesale unit was awarded 9 percent of the total.<sup>65</sup> With over one-third of the energy generated for the upcoming year coming from parent companies or related entities of the two main Illinois utility companies, consumer advocates did not think the auction offered enough competition to ensure the price of electricity was determined by a true competitive market.<sup>66</sup>

One of the main arguments extolled by the opponents of the power auction was that the Illinois Public Utilities Act did not allow the charging of market-based rates to utility customers when customers did not have a viable alternative to their pre-existing utility company.<sup>67</sup> In other words, market-based rates should not be allowed in Illinois because customers unhappy with Ameren or ComEd have no other choice.<sup>68</sup> The purpose of deregulation was to allow entry for new players in the energy market. However, since no new players have emerged, the Office of the Illinois Attorney General argues the existing players, Ameren and ComEd, have no competition and thus no incentive to keep prices low.<sup>69</sup>

On the other hand, proponents of the power auction argue that the format of the auction - prices ticking down in each round where

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<sup>63</sup> Ashley M. Heher, *Illinois Electricity Rates to Climb as Much as 55 Percent*, AP ALERT, Sept. 15, 2006.

<sup>64</sup> *Energy Trader Article*, *supra* note 40.

<sup>65</sup> *Id.*

<sup>66</sup> *See id.*

<sup>67</sup> Press Release, Illinois Attorney General Lisa Madigan, Madigan, Devine, Consumer Groups File Lawsuit Against Illinois Commerce Commission to Protect ComEd and Ameren Customers (Sept. 1, 2005), *available at* [http://www.illinoisattorneygeneral.gov/pressroom/2005\\_09/20050901c.html](http://www.illinoisattorneygeneral.gov/pressroom/2005_09/20050901c.html) (last visited Feb. 8, 2007).

<sup>68</sup> *Heher*, *supra* note 63.

<sup>69</sup> *Id.*

supply was greater than demand - allowed for the lowest prices to be offered to Illinois customers.<sup>70</sup> In fact, utility analysts immediately following the power auction found that despite the significant price increases in Illinois, electricity was still cheaper than that paid for on the east or west coast.<sup>71</sup> On September 14, 2006 the ICC approved the results of the auction and declared the auction to be competitive.<sup>72</sup>

#### **D. Current Efforts to Curtail the Increased Costs to Consumers**

After learning that overall electricity rate increases for Illinois customers were estimated to be in the range of 22-55 percent for ComEd and Ameren customers, the Illinois House of Representatives considered freezing rates for three more years.<sup>73</sup> In November 2006, a bill which would have extended the rate freeze for an additional three years was narrowly rejected.<sup>74</sup> The Illinois utilities quickly shot back by running television ads in November 2006 stating that if state legislators froze electricity rates, as they had threatened to do, then Illinois residents could suffer from rolling blackouts as California residents have in the past.<sup>75</sup> Ameren and ComEd stated that if they are required to deliver energy to customers at a fraction of the cost, they will go bankrupt and citizens will have to rely on the state to purchase power for its residents.<sup>76</sup> Both utility companies claimed they would lose millions of dollars a day if they were not allowed to increase electricity rates beginning in 2007.<sup>77</sup> However, despite the press scare tactics employed by the utility companies, the Illinois House of Representatives was intent on pressing forward with its attempts to freeze electricity rates.

By December 31, 2006, Illinois legislators could not agree on the best way to curtail rate increases, so the higher rates took effect beginning on January 2, 2007.<sup>78</sup> ComEd customers in northern Illi-

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Press Release, Illinois Commerce Commission, ICC Approves Results of First Power Auction (Sept. 14, 2006), available at <http://www.icc.illinois.gov/docs/en/060914ecAuctionPR.pdf> (last visited Feb. 8, 2007).

<sup>73</sup> McDermott, *supra* note 22.

<sup>74</sup> Colindres, *supra* note 60.

<sup>75</sup> McDermott, *supra* note 22.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Keith, *supra* note 18, at 1.

nois experienced an average rate increase of 22 percent while Ameren customers in central and southern Illinois experienced a rate increase of 55 percent.<sup>79</sup> Illinois House Speaker Michael Madigan pledged to push for an extension of a rate freeze in early January of 2007.<sup>80</sup>

On January 7, 2007, the Illinois House approved a bill to extend the current freeze on electricity rates that would also roll-back the rate increases threatening Illinois utility customers.<sup>81</sup> The bill passed the House with 71 in favor and only 29 against the rate freeze extension.<sup>82</sup> The bill then went before the Illinois Senate, which at the time had its own relief plans for Illinois utility customers that did not include an extension of the rate freeze. The Illinois Senate had already approved a phase-in proposal backed by Senate President Emil Jones.<sup>83</sup> Thus, the Illinois House and the Senate appeared to be at a stalemate. As of the conclusion of the 94<sup>th</sup> Illinois General Assembly on January 9, 2007, the Illinois Senate had still not voted on the three year extension to the electricity rate freeze backed by House Speaker Michael Madigan, and in return Madigan never called a vote on the Senate passed plan to phase-in rate increases backed by Senate President Emil Jones.<sup>84</sup> While the Illinois General Assembly squabbles over the best way to aid Illinois residents, nothing is being done to help curtail the large increases in electricity rates currently affecting consumers. As long as the stalemate lasts, Illinois residents will be subjected to the increased rates.

Ironically, while the Illinois General Assembly argued about how to aid consumers, Ameren and ComEd proposed phase-in plans to the ICC.<sup>85</sup> Ameren proposed that rate increases for residential customers be phased-in over three years at the option of the individual customer.<sup>86</sup> ComEd's proposal to the ICC also allowed customers to phase-in the increased rates over three years.<sup>87</sup> The ICC has ap-

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<sup>79</sup> *Id.*; Chase & Garcia, *supra* note 62.

<sup>80</sup> *Id.*

<sup>81</sup> Chase & Pearson, *supra* note 39.

<sup>82</sup> *Id.*

<sup>83</sup> Keith, *supra* note 18, at 3.

<sup>84</sup> Chase & Garcia, *supra* note 62.

<sup>85</sup> *See* Keith, *supra* note 18, at 3.

<sup>86</sup> Stroud, *supra* note 56.

<sup>87</sup> Keith, *supra* note 18, at 3.

proved both the Ameren and ComEd phase-in proposals.<sup>88</sup> The Ameren phase-in, also known as the “Customer Elect Plan” will be offered to residential customers, schools, some businesses and governmental units.<sup>89</sup> Under this plan, each customer will pay an extra 14 percent for three years with an additional 3.25 percent interest charge on the amount they defer to later years.<sup>90</sup> Under the ComEd phase-in, customers will pay an extra 10 percent each year for three years and will also be charged an interest rate of 3.25 percent on all payments deferred to later years.<sup>91</sup> Opponents of the phase-in argue that current plans are more similar to a loan than a true phase-in due to the interest charges that customers will incur in the long-run.<sup>92</sup> While it appears to be true that the Ameren and ComEd plans function more as loans rather than true rate phase-ins, at the very least, Ameren and ComEd have come up with plans to help consumers pay for the increase in electricity rates in the short-run. The Illinois General Assembly, on the other hand, has refused to compromise in order to help the people in the short-run or long-run. As the end of the first quarter of 2007 approaches, the Illinois General Assembly still has not taken any action.

## V. Financial Condition of the Illinois Utility Companies

Amidst the call for an increase in electricity rates, CUB and other consumer advocate groups argued that the utility companies have been recording profits when rates were frozen so there is no viable reason for the rate increases.<sup>93</sup> Since the year 2000, a seven-year time period during which rates were frozen, ComEd netted income of \$133 million in 2000, \$607 million in 2001, \$790 million in 2002, \$707 million in 2003, and \$676 million in 2004.<sup>94</sup> In 2005 and 2006,

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<sup>88</sup> *Id.* at 2.

<sup>89</sup> Colindres, *supra* note 60; FAQs – Customer Elect Plan, [http://www.ameren.com/amerenpost2006/ADC\\_CEP\\_FAQs.asp](http://www.ameren.com/amerenpost2006/ADC_CEP_FAQs.asp) (last visited Mar. 5, 2007) [hereinafter *Customer Elect FAQs*].

<sup>90</sup> Keith, *supra* note 18, at 3; *Customer Elect FAQs*, *supra* note 89.

<sup>91</sup> See Keith, *supra* note 18; Customers’ Affordable Reliable Energy (CARE) provided by ComEd, About Us, [http://www.exeloncorp.com/comedcare\\_main/comedcare/aboutus.htm](http://www.exeloncorp.com/comedcare_main/comedcare/aboutus.htm) (last visited Mar. 5, 2007).

<sup>92</sup> Colindres, *supra* note 60.

<sup>93</sup> Keith, *supra* note 18, at 3.

<sup>94</sup> Exelon Corp., Annual Report (Form 10K), at 146 (Mar. 21, 2003) and Exelon Corp., Annual Report (Form 10K), at 268 (Feb. 15, 2006) [hereinafter *Exelon Report 2005*].

ComEd estimated a goodwill impairment of \$1.2 billion and \$776 million respectively.<sup>95</sup> In 2005, the impairment of goodwill was driven by the upcoming end of the transition period, the end of the related transition revenues as well as by regulatory uncertainty in Illinois that existed as of the time of the impairment analysis on November 1, 2005.<sup>96</sup> The impairment of goodwill caused ComEd to record a net loss of \$685 million in 2005.<sup>97</sup> Utility companies are concerned that if they are not allowed to recover their costs by charging at least the amount paid for the energy they deliver, they will suffer a downgrade in their credit rating and lose opportunities to enter or remain in certain financial markets.<sup>98</sup> However, subsequent to the impairment analysis, the ICC approved the procurement method proposed by ComEd and the regulatory uncertainty that existed at the end of 2005 has since disappeared. In 2006, the impairment of goodwill was driven by further regulatory uncertainties that occurred at the time of the 2006 impairment analysis, November 1, 2006.<sup>99</sup> The regulatory uncertainties that existed at the time included, among others, the uncertainty related to annual power auctions, the potential for an extension of the rate freeze or a legislatively imposed phase-in that may not include interest charges on deferred payments.<sup>100</sup> The \$776 impairment of goodwill resulted in a net loss of \$112 million in 2006.<sup>101</sup> While ComEd is no doubt being conservative in its estimates of goodwill impairment due to the uncertainty of events leading up to the end of the transition period, the fact remains that none of the events ComEd thought may affect income and profits have occurred almost a quarter of the way through 2007. Furthermore, ComEd's recent negative profits have done little to slow the growth of the stock price of Exelon, ComEd's parent company. During the ten-year rate freeze, Exelon's stock price has risen from approximately \$10 a share in 1997 to over \$60 a share in late 2006 and into 2007.<sup>102</sup>

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<sup>95</sup> Exelon Corp., Annual Report (Form 10K), at 225-26 (Feb. 13, 2007) [hereinafter *Exelon Report 2006*].

<sup>96</sup> *Id.*

<sup>97</sup> *Exelon Report 2005*, *supra* note 94, at 268.

<sup>98</sup> *Id.* at 10.

<sup>99</sup> *Exelon Report 2006*, *supra* note 95, at 225.

<sup>100</sup> *Id.* at 212-13.

<sup>101</sup> *Id.* at 167.

<sup>102</sup> Exelon Corp.- stock information, <http://www.exeloncorp.com> (follow Investor Relations hyperlink; then follow stock information hyperlink) (last visited Mar. 5, 2007).

Ameren has experienced similar financial success during the ten-year rate freeze. During the past ten years, Ameren's stock has increased from approximately \$35 a share in 1997 to about \$50 a share in 2007.<sup>103</sup> In 2002, Ameren recorded a net profit of \$382 million, in 2003 a net profit of \$524 million, in 2004 a net profit of \$530 million, in 2005 a net profit of \$606 million, and in 2006 a net profit of \$547 million.<sup>104</sup> Over the most recent 5-year period, the company's net profits have increased virtually every year, and profits have risen approximately 44 percent since 2002.

The financial data of the two Illinois utilities indicate that these companies have grown their profits despite having electricity rates frozen for nearly ten years. They have done so by requesting increased distribution charges from the ICC. The utilities only earn profits from the delivery charge portion of electricity bills.<sup>105</sup> The electricity that utilities purchase from generators is sold to customers with zero mark-up.<sup>106</sup> Therefore, the utilities will only earn a profit on the portion of the 22-55 percent increase in energy costs represented by an ICC approved increase in delivery charge. With profits increasing nearly every year, the utilities have clearly established a way not only to stay profitable, but to increase profitability despite only earning profits from the 20-30 percent of each electricity bill representing delivery charges. In order to ensure that the utility companies recover their costs, it seems reasonable for the utilities to request interest charges on deferred amounts relating to the cost of energy generation. However, the fact that the phase-in plans currently in effect include a 3.25 percent interest charge on all deferred amounts, including the delivery charge, results in the utilities earning interest on their profits in order to retain and grow their earnings. To expect interest on profits seems to be an unreasonable request.

## **VI. Effect of Increased Electric Bills on Consumers in 2007 and Subsequent Years**

With electricity rates rising an average of 22 percent for ComEd customers and 55 percent for Ameren customers beginning on

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<sup>103</sup> Ameren - Stock Chart, <http://phx.corporate-ir.net/phoenix.zhtml?c=91845&p=irol-stockchart> (last visited Mar. 5, 2007).

<sup>104</sup> Ameren, Annual Report (Form 10K), at 86 (Mar. 9, 2004) and Ameren, Annual Report (Form 10K), at 80 (Mar. 1, 2007).

<sup>105</sup> Manor, *supra* note 5; Smith, *supra* note 58.

<sup>106</sup> Manor, *supra* note 5.

January 2, 2007<sup>107</sup>, many Illinois residents and businesses find themselves faced with difficult decisions this winter and in the upcoming summer. The Illinois AARP anticipates the rate hikes to be felt the hardest by seniors and young families; those with low or fixed incomes.<sup>108</sup> The increasing costs will affect all aspects of society from the government to small and large businesses.

AARP lobbyist Mary Patton predicts that the increase in electricity costs will ultimately result in additional taxes to help governments pay for the increased overhead, and businesses will become even more concerned with their bottom line and cutting costs.<sup>109</sup> All of this is bad news for the seniors and others living on a fixed income. A modest electric bill of \$100 monthly will increase to between \$122 monthly and \$155 monthly causing a yearly increase in costs from between \$264 to \$660. Such an increase could have a profound effect on an individual living on a fixed budget. Many individuals on fixed or low income budgets may be faced with difficult decisions regarding whether to heat or cool their home or to purchase other necessary items such as medicine and health care.

While the Ameren and ComEd phase-in plans will help individuals with fixed incomes to pay their bills in the short-run, these individuals will be paying the price in later years with interest charges. Charges from the first year of the phase-in that are deferred until the third year will be compounded at an annual interest rate of 3.25 percent. Each year the fixed income individuals will owe the utility companies more money while their income remains constant. While they will be better able to pay their bills in the short-run, what will happen to these individuals after year three when they are unable to pay the balance with three years of accrued interest? The Illinois General Assembly has known for years that the electricity rate freeze would end on January 1, 2007 and that date has come and gone without any action from the legislature. During his re-election campaign, Illinois Governor Blagojevich adamantly advocated for an extension of the rate freeze, but no legislation can reach him until the Illinois House of Representatives and the Senate can agree on the best way to assist Illinois customers.<sup>110</sup>

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<sup>107</sup> Chase & Garcia, *supra* note 62.

<sup>108</sup> *The Real Deal on Electricity in Illinois: What does a pending electrical rate hike mean for Illinois seniors?*, AARP, [http://www.aarp.org/states/il/il-news/the\\_real\\_deal\\_on\\_electricity\\_in\\_illinois.html](http://www.aarp.org/states/il/il-news/the_real_deal_on_electricity_in_illinois.html) (last visited Mar. 5, 2007).

<sup>109</sup> Keith, *supra* note 18, at 1.

<sup>110</sup> See Chase & Pearson, *supra* note 39.

## VII. Alternative Possibilities to Reduce Costs to Consumers

An alternative way in which energy consumers can control the amount of their energy bill is through a new technology known as demand response. The idea behind demand response is to shift or cut the load from utilities via time of use rates or critical peak pricing plans.<sup>111</sup> However, such technology requires advanced metering and, as of yet, demand response has only penetrated approximately 6 percent of the market.<sup>112</sup> The concept flows from basic economic principals of supply and demand. During peak times of energy use, customers are either requested to use energy at different times of the day or are provided with incentives to do so because they will be charged lower rates, for example, late at night than they would be charged for peak electricity times.<sup>113</sup> As the demand decreases during peak times, lower prices can result for all electricity consumers.

However, there are several disadvantages to demand response – the main disadvantage being the capital cost of the equipment required in order to implement demand response.<sup>114</sup> The savings that could result directly from demand response seems to be worth the initial capital expenditure. Just last summer, demand response was credited with saving approximately \$600 million over a week long heat wave along the east coast.<sup>115</sup> During peak times, rather than having to use additional energy, customers chose to use less electricity, which resulted in huge daily savings.<sup>116</sup> On August 2, 2006 alone, demand response was credited with savings of \$230 million.<sup>117</sup> Customers who voluntarily reduced their energy demand during peak times also received as incentives, cash rebates equal to the market value of the electricity saved.<sup>118</sup> While demand response is not yet a major player in the large U.S. markets, it seems to be a cost saving solution which gives consumers a choice as to when they want to use

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<sup>111</sup> *Report Says Demand Response Still a Small Player, But EEI Sees 'Buzz' In Recent Weeks*, ELECTRIC UTIL., Aug. 14, 2006, at 1.

<sup>112</sup> *Id.* at 1-2.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 5.

<sup>115</sup> *Demand Response Saved \$650 Million During Heat Wave*, ENERGY DAILY, Aug. 18, 2006.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

electricity and when they want to save money.

### VIII. Conclusion

With the situation in the Illinois General Assembly still in a deadlock, individuals with fixed or low incomes must demand a result. If the legislature extends the rate freeze for another few years, they cannot repeat the mistake they made this time around by allowing the rate freeze to expire without having an alternative plan in place. Currently, the element of society that is most in need of government protection, low and fixed income individuals, has been left abandoned by the Illinois General Assembly. If the Illinois General Assembly decides to freeze rates for a few more years, they should seriously consider demand response technology to allow customers to control how much energy they use and at what times. This technology can result in either huge savings or additional expenditures depending solely on the decisions made by the customer. On the other hand, if the legislature opts to adopt a phase-in procedure, they should do so without charging interest on deferred payments. At the very least, the legislature should push for a phase-in plan that does not charge the 3.25 percent interest on any deferred delivery rate charges.

Regardless of the actions taken by the legislature, the fact remains that the price increases do not appear to be indicative of competitive prices, as competitive prices would have more likely lowered the cost of electricity rather than increased it. With other industries, such as the communication industry, deregulation has resulted in lower prices as countless new telecommunication companies have emerged. Approximately ten years after deregulation, long-distance telephone rates decreased by 50 percent.<sup>119</sup> The same cannot be said, as of yet, for the utility industry. The energy market has not produced any decline in market prices ten years after deregulation began.<sup>120</sup> The idea behind deregulation is that customers will benefit from lower prices in a given industry. Currently in Illinois, the opposite has occurred, and electricity prices have increased at shockingly high rates. Until adequate competition emerges in the industry, utilities are better suited to be regulated.

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<sup>119</sup> Johnston, *supra* note 1.

<sup>120</sup> *Id.*