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SHANGHAI
SILICON VALLEY
WASHINGTON

WASHINGTON, DC 20004-2401
T 202.662.6000
F 202.662.6291
www.cov.com

July 11, 2013

Docket Control
Arizona Corporation Commission
1200 W. Washington Avenue
Phoenix AZ 85007

Re: Docket No. E-00000W-13-0135

Enclosed please find an original and 13 copies of the comments of the COMPETE Coalition in the above-referenced matter.

An extra copy of the comments is also enclosed. Please time-stamp that copy and return in the self-addressed stamped envelope provided.

Sincerely,

William L. Massey
Counsel for the COMPETE Coalition

Enclosures

BEFORE THE ARIZONA CORPORATION COMMISSION

In The Matter Of The Commission's Inquiry Into Retail Electric Competition

Docket No. E-00000W-13-0135

COMMENTS OF THE COMPETE COALITION

The COMPETE Coalition ("COMPETE") respectfully submits these comments to assist the Arizona Corporation Commission ("the Commission") in its evaluation of a transition to retail electric competition. In these comments, COMPETE highlights the demonstrated and substantial customer benefits competitive retail electricity markets in the U.S. provide, and urges the Commission to move forward to implement retail electric competition in Arizona.

Background

COMPETE is an organization of more than 700 electricity stakeholders, including customers, suppliers, generators, transmission owners, trade associations, environmental organizations and economic development corporations -- all of whom support well-structured, competitive electricity markets for the economic and environmental benefit of consumers. Forty-five COMPETE customer members have over 1,200 facilities in Arizona.[1] COMPETE notes that all customer groups, including residential customers, have seen value from competitive markets.

The extensive, long-term experience of COMPETE's customer members with retail choice markets, as well as published data, demonstrate convincingly that robust customer choice

[1] A list of the COMPETE customer members with facilities in Arizona is included in these comments as Attachment 1.

and retail electric competition are the best ways to ensure that Arizona's residents and businesses have access to reliable, lowest-possible-cost, environmentally-sound electricity. Competition has been the driving economic engine of our Nation for more than 200 years, and COMPETE has found that electricity competition disciplines investment and operational decisions, drives innovative products and services, and keeps prices as low as possible while ensuring a reliable supply of electricity, all without requiring customers to bear the financial risks of utility investments.

Responses to Commission Staff's Questions

On May 23, 2013, the Commission Staff invited comments from electric industry stakeholders and customers to assist the Commission in an evaluation of a transition to retail electric competition, and posed questions for commenters to address. COMPETE's responses are presented below.

1) **Will retail electric competition reduce rates for all classes of customers - residential, small business, large business and industrial classes?**

While energy costs may increase or decrease over time, competitive electricity markets do the best job of ensuring the lowest available price. According to an analysis of data from the U.S. Energy Information Administration and the Bureau of Labor Statistics, between 1997 and 2012, inflation-adjusted retail rates in states with restructured competitive retail markets decreased by 4% while those in states that rely on monopolies increased 7%. And retail customers in all classes in restructured states have enjoyed these decreases. Specifically, inflation-adjusted rates for residential, commercial and industrial customers in retail choice states decreased by 6.5%, 12.1%, and 1.7%, respectively, over this period while rates in these same customer classes in monopoly utility states increased by 3.9%, 1.2% and 10.1%, respectively. A graphic presentation of these price trends is included in these comments as Attachment 2.

2) In addition to the possibility of reduced rates, identify any and all specific benefits of retail electric competition for each customer class.

COMPETE's customer members in many states have found that well-designed, competitive electricity markets produce substantial savings on electricity costs that allow commercial and industrial users of electricity to maintain lower prices for their own customers and to invest in their own businesses. In addition to keeping prices as low as possible, policies that allow electricity users to manage their energy purchases efficiently are critical to achieving such savings.

Electricity is one of the largest operating costs of businesses, and control of these costs enhances business growth, profitability and the ability to maintain and create jobs. COMPETE believes that competitive retail markets are the best way to achieve such goals. Competitive electricity markets not only produce the lowest available prices but also provide customers flexibility to choose a supplier that best meets their respective business goals, with targeted service offerings providing choices on price, reliability, generation portfolio mix, risk management, and other specific product and service features. For example, competitive electricity markets promote, and help customers deploy, supply-side options in renewable energy. Through retail choice, businesses are no longer tethered to a rate-regulated electric generation mix, but instead are able to shop for a desired generation mix which meets their particular needs.[2]

Competitive electricity markets also allow customers to better manage financial risk. In contrast to monopoly utility companies that are guaranteed recovery of their costs from their

[2] Phillip O'Connor, *Retail Electric Choice: Proven, Growing, Sustainable,* April 3, 2012 at 9. This paper, prepared for COMPETE, is included in these comments as Attachment 3, and is available at: http://www.competecoalition.com/files/COMPETE_Coalition_2012_Report.pdf

captive customers, customers in competitive electricity markets can choose among service providers who have no guarantee of cost recovery. To successfully compete, service providers must offer a superior service at a better price than their competitors and a variety of products and services that customers want. The risks of poor investment decisions by competitive suppliers are borne by the suppliers themselves and their respective shareholders, not by captive customers.

Competitive electricity markets also help mitigate customers' electric costs by facilitating innovative demand response resources, which have flourished in such markets. Demand response providers, or curtailment service providers, have introduced product and service innovations allowing consumers to reduce or modify their electricity consumption to control their electricity use and costs. This helps to keep prices down and avoids the need to build expensive new generating plants.

Competitive retail markets also provide a superior platform for the emerging Smart Grid technologies. Sophisticated Smart Grid tools enable customers to take advantage of the market's transparent price signals and make smart consumption and investment decisions.

Environmental benefits also result from competitive electricity markets. In a Joint Statement of General Principles, COMPETE and the Environmental Defense Fund recommended "market-based mechanisms both to encourage the efficient operation and use of existing and new resources and to achieve environmental improvements through conservation and biddable demand response."

Evidence that competitive electricity markets benefit customers is demonstrated by the number of customers who actually shop for alternative suppliers. In the 17 states and the District of Columbia where retail competition is allowed, competitive providers supply 68% of eligible

non-residential demand and more than 31% of residential demand.[3] Moreover, the number of shopping customers is surging. During the economic slowdown between 2008 and 2011, electricity usage in the continental U.S. declined by slightly less than 1%, but the electricity demand served competitively increased by 40%, and the number of customers served under retail choice grew by over 53%.[4]

5) How can the Commission guarantee that there would be no market structure abuses and/or market manipulation in the transition to and implementation of retail electric competition?

Where retail competition is allowed, state commissions have imposed a number of safeguards to protect consumers. For example, one safeguard is a Provider-of-Last-Resort (POLR) obligation on incumbent utilities. If a consumer does not elect to purchase from a competitive supplier, the incumbent utility is required to serve that consumer at a rate that reflects the cost of procuring the power. Some states require that the incumbent utility purchase the supply to meet its POLR obligations in a competitive procurement process overseen by the state commission.

State commissions also oversee competitive suppliers, which generally must be licensed or certified by the commission after showing a supplier meets specific managerial, technical and financial requirements. Most states require periodic updates or continuing certification requirements from competitive suppliers. Moreover, suppliers' sales and marketing activities and other behavior are often monitored and regulated by the states – especially as these activities and behavior relate to residential and smaller commercial customers. These regulations may include

[3] *Id.* at 7.

[4] *Id.* at 3.

reporting requirements in the areas of customer complaints, customer service calls, revenue reports, fuel mix disclosures, and certain other compliance matters.

In a retail choice market, the state commissions also have a role in monitoring the activities of the incumbent utilities to ensure that their practices are competitively neutral, and to protect consumers from cross-subsidizing investors and shareholders. Some of the ways commissions ensure competitive neutrality and guard against cross-subsidization are:

- Requiring prior approval of all contracts with affiliates.
- Requiring annual reporting, and conducting periodic audits of transactions with affiliates.
- Restricting guarantees of an affiliate's debt or prohibiting loans to an affiliate on terms more favorable than commercial terms.
- Seeking treble damages for payments that benefit an affiliate.
- Requiring non-discriminatory information sharing or use of a utility's wires to its affiliate's competitors.[5]
- Limiting the ability of utilities to actively market their POLR service.
- Ensuring that any competitive services provided by the utility are offered by a competitive affiliate who is subject to the same competitive conditions as non-affiliated suppliers.

6) What, if any, features, entities or mechanisms must be in place in order for there to be an effective and efficient market structure for retail electric competition? How long would it take to implement these features, entities, or mechanisms?

States that have restructured retail electricity markets but are not within the footprint of an RTO or ISO should establish an independent entity to perform the critical function of scheduling generation and transmission services. Independence from market participants is

[5] COMPETE, *Regulation and Oversight of the Electric Power Industry*, September 14, 2010 at 9-10. Available at: http://www.competecoalition.com/files/Regulation%20and%20Oversight%20of%20the%20Electric%20Power%20Industry.pdf

essential to ensure that such important functions are performed in a non-discriminatory manner that ensures a level playing field.[6]

The framework for such an independent entity already exists in Arizona. Protocols are already in place for an Arizona Independent Scheduling Administrator ("AZ ISA") to act as a transmission scheduling administrator to support the implementation of retail electric competition. Because it is independent of market participants, the AZ ISA has no incentive to discriminate among generators when adjusting dispatch to correspond to actual hourly demand. COMPETE recommends that Arizona use this platform to implement retail competition, unless and until Arizona's utilities and policymakers determine that formation of or membership in a Regional Transmission Organization or Independent System Operator is desirable and cost effective.

7) Will retail electric competition require the divestiture of generation assets by regulated electric utilities? How would FERC regulation of these facilities be affected?

In competitive retail markets, wires assets should eventually be separated from generation assets. This is needed to ensure that the full range of benefits of a competitive energy supply sector is not compromised and/or undermined by utility rate-regulated ownership of supply side resources. Separation is also needed to mitigate the conflict of interest the wires service provider would have to provide advantages to its affiliated generation operations over competing suppliers through preferential service or information sharing, and to avoid imposing on wires customers the costs and risks of its generation assets. This separation can be done fairly by transferring the supply side resources to an affiliate of the wires company subject to a code of conduct to prevent

[6] See *COMPETE Competitive Market Principles*, available at: http://www.competecoalition.com/files/COMPETE%20Market%20Principles%20-%20FINAL.pdf

preferential treatment by the wires affiliate or by divesting the generation assets to another firm with no wires assets.

The need for separating generation from wires assets was driven home in a recent New Hampshire Public Utilities Commission staff report. [7] The report highlights that Public Service Co. of New Hampshire's continued ownership of generation facilities, with the costs imposed on the utility's customer base, is not compatible with the state's now-thriving competitive retail electricity market, and will distort good market outcomes for consumers. The staff report underscores the fact that the best interests of New Hampshire electricity consumers will be served if the original intent of the state's 1996 electricity restructuring law is adhered to and PSNH is required to divest its power plants.

While divestiture of assets provides the preferred and cleanest separation of wires and supply, it is not required for a successful retail choice program. What is required is that incumbent utilities not be allowed to make investments going forward on behalf of retail suppliers and their customers and recover the associated costs through non-bypassable charges.

9) Will retail electric competition impact reliability? Why or why not?

There is no evidence that suggests that competitive retail electricity markets adversely impact reliability. Retail choice has been allowed in 17 states and in the District of Columbia without reliability problems. The reliability of the bulk power system is overseen by the NERC, with FERC enforcement oversight, regardless of the structure of retail markets. At the distribution level, the Commission and other institutions will continue to have their current

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[7] Staff of the New Hampshire Public Utilities Commission and The Liberty Consulting Group, *Public Service Company of New Hampshire, Report on Investigation into Market Conditions, Default Service Rate, Generation Ownership and Impacts on the Competitive Electricity Market,* June 7, 2013. Available at: http://www.puc.state.nh.us/Electric/IR%2013-020%20PSNH%20Report%20-%20Final.pdf

authorities over distribution service and can continue the same practices with respect to the distribution service companies to ensure the reliability of the distribution system. In addition, both competitive suppliers and the utility default suppliers are subject to the same reliability requirements (capacity, planning reserves, and operating reserves).

10) What are the issues relating to balancing area authorities, transmission planning, and control areas which must be addressed as part of a transition to retail electric competition?

States that have restructured retail electricity markets but are not within the footprint of an RTO or ISO should establish an independent entity to perform the critical function of scheduling generation and transmission services. Independence from market participants is essential to ensure that such important functions are performed in a non-discriminatory manner that ensures a level playing field. See COMPETE's response to Question #6.

11) Among the states that have transitioned to retail electric competition, which model best promotes the public interest for Arizonans? Which model should be avoided?

A number of states have successfully transitioned to retail competition and produced benefits for customers and the state economies. A number of key market features made the transitions successful.[8]

One model to avoid is placing arbitrary limits on which entities, resources or customers may participate in the market. For example, Michigan and California have imposed limitations on how much load may take service from competitive retail suppliers. Preventing some customers from shopping for their electricity suppliers while allowing others to shop is unfair.

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[8] For discussions of the of key states and the features, *see* O'Connor, *Retail Electric Choice: Proven, Growing, Sustainable,* and Philip O'Connor, *Customer Choice in Electricity Markets: From Novel to Normal,* November 15, 2010. Available at: http://www.competecoalition.com/files/Customer-Choice-In-Electricity-Markets_0.pdf

Moreover, it artificially limits the demand for service from competitive suppliers, keeps investment in potentially lower-cost resources out of the market, and leads to unnecessarily high prices.[9] Michigan's limiting competition to only 10% of load has been estimated to cost that state's consumers $1.8 billion annually.[10] In California, customer demand for competitive electricity supply options far exceeds the limit permissible under the statutory cap.[11]

12) How have retail rates been affected in states that have implemented retail electric competition?

Since 1997, inflation-adjusted retail rates in states that have restructured their electricity markets and implemented retail electric competition have actually decreased for all customer classes while those in states that rely on monopoly utilities have increased across all customer classes. See COMPETE's response to Question #1.

14) Is retail electric competition compatible with the Commission's Renewable Energy Standard that requires Arizona's utilities serve at least 15% of their retail loads with renewable energy by 2025? (See A.A.C. R14-2-1801 et seq.)

Retail electric competition is compatible with the Commission's Renewable Energy Standard. To the extent Arizona continues to impose its Renewable Energy Standard and Tariff (REST) of 15% by 2025, each retail electricity supplier should be required to comply. Because retail suppliers compete with other suppliers, each would have an incentive to procure renewable

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[9] See *COMPETE Competitive Market Principles*, available at: http://www.competecoalition.com/files/COMPETE%20Market%20Principles%20-%20FINAL.pdf

[10] See *Limits on Competition Costs Michigan Consumers $1.8 Billion Annually, Expert Says,* available at: http://www.competecoalition.com/blog/2013/04/limits-competition-costs-michigan-consumers-18-billion-annually-expert-says

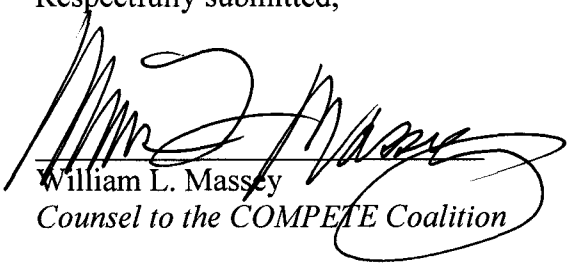
[11] See *Wide Spectrum of California Customers Clamor for Greater Access to Competitively Priced Electricity,* available at: http://www.competecoalition.com/blog/2013/05/wide-spectrum-california-customers-clamor-greater-access-competitively-priced-electrici

energy efficiently. Accordingly, the market will determine which renewable energy resources meet the Commission's renewable energy goals at the least cost.

Conclusion

As demonstrated in the above responses, COMPETE believes there is clear and convincing evidence that competitive retail electric markets provide residents and businesses with reliable, environmentally sound electricity at the lowest available cost. Accordingly, COMPETE urges the Commission to take the steps needed to advance well-structured competitive retail electric markets in Arizona. COMPETE commends the Commission for initiating this evaluation of retail competition and stands ready to provide assistance and support to you and your staff throughout your proceeding.

Respectfully submitted,



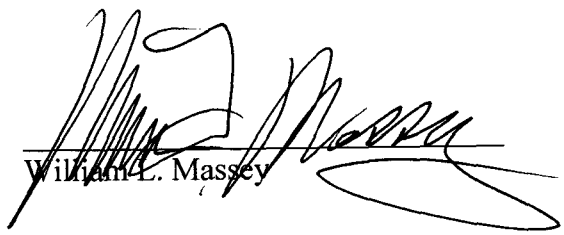
William L. Massey
Counsel to the COMPETE Coalition

Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
202-662-5322
wmassey@cov.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person identified on the Commission's official service list.

Dated at Washington, D.C. this 11th day of July, 2013.



William L. Massey

ATTACHMENT

1

COMPETE Customer Members with Facilities in Arizona

7-Eleven, Inc.
Amtrak
AT&T
Big Lots Stores, Inc.
Boston Market Corporation
Cargill, Incorporated
CKE Restaurants, Inc.
Comcast Corporation
Costco Wholesale
Crescent Real Estate Equities
Cushman & Wakefield
CVS/pharmacy
Dollar General
Dollar Tree Stores, Inc.
Einstein Noah Restaurant Group
El Pollo Loco
Extra Space Storage
H&R Block
J.C. Penney Corporation, Inc.
Johnson Controls, Inc.
Kohl's Department Stores
Kraft Foods
Leggett & Platt, Inc.
Lowe's Home Centers, Inc./Lowe's HIW, Inc.
Macy's Inc.
National Church Residences
NBC Universal
OfficeMax
Papa John's International
PETCO
PetSmart, Inc.
Polo Ralph Lauren Corp.
RadioShack Corporation
Red Robin Gourmet Burgers
Safeway Inc.
Saks Fifth Avenue
Shoe Carnival, Inc.
Staples Inc.
Supervalu
Target Corporation
TJX Companies
Wal-Mart Stores, Inc.
Wendy's Quality Supply Chain Coop, Inc.
WinCo Foods, LLC
Yum! Brands, Inc.

ATTACHMENT

2

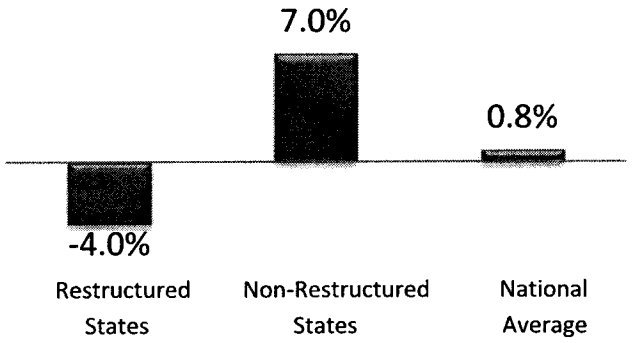
States with Restructured Electricity Markets Post Lower Rates of Change

Comparison of Rate Changes Across Electricity Markets – 1997-2012

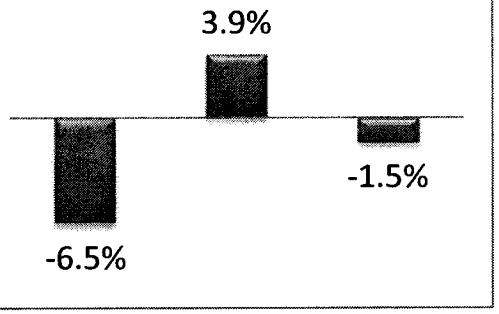
*Restructured States vs. Non-Restructured States**

COMPETE
Electricity Competition Drives Innovation and Consumer Benefits

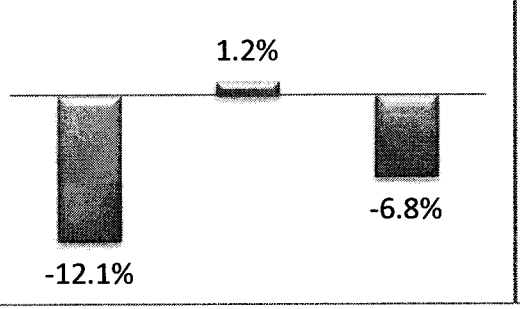
Rate Change: All Sectors



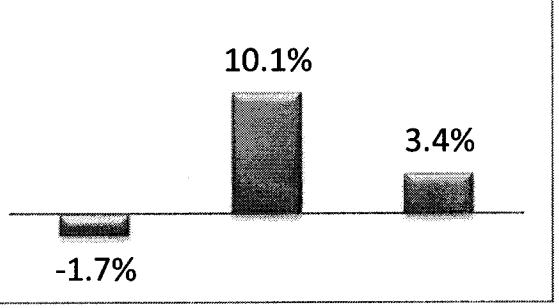
Residential Sector



Commercial Sector



Industrial Sector



* Restructured States include CA, CT, DE, IL, MA, MD, ME, MI, MT, NH, NJ, NY, OH, PA, RI, TX, and DC (17 states). These reflect states with active retail choice programs (15 states) and states with inactive/suspended retail choice programs but large portions of generation provided by Independent Power Producers (2 states). CA and MT fall in the latter category with less than 50% of net generation provided by electric utilities in 2010.

Results were calculated using price information from the U.S. Energy Information Administration (EIA) and a Consumer Price Index of Urban Consumers (CPI-U) of 43% for the period between 1997 and 2012. Sources: EIA and The Bureau of Labor Statistics)

ATTACHMENT

3

COMPETE

Electricity Competition Drives Innovation and Consumer Benefits

www.competecoalition.com

RETAIL ELECTRIC CHOICE:
PROVEN, GROWING, SUSTAINABLE

Philip R. O'Connor, Ph.D.

Prepared for the COMPETE COALITION

April 3, 2012

COMPETE
Electricity Competition Drives Innovation and Consumer Benefits
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RETAIL ELECTRIC CHOICE:
PROVEN, GROWING, SUSTAINABLE

Table of Contents

ELECTRIC CHOICE HAS SURGED DURING THE ECONOMIC SLOWDOWN

Electric consumption in the United States was no greater in 2011 than it was in 2008 at the start of the economic slowdown. Yet, since 2008 retail electric choice volumes have surged. Not only has there been substantial growth in customer migration from traditional monopoly-regulated electric supply to market-priced energy, key indicators demonstrate electric choice growth is sustainable.

- Since 2008, customer accounts served under retail electric choice have grown by over 53%, from nearly 8.7 million to more than 13.3 million in 2011.
- Between 2008 and 2011, total electric load served competitively has grown by 40%, or nearly 200 million megawatt-hours (MWh), from about 488 million MWh to 685 million MWh.
- By the end of 2011, retail electric choice supplied more than 18% of the nation's electric load or about one out of every five kilowatt-hours (kWh) in America – even though retail electric choice is largely confined to 18 jurisdictions accounting for about 44% of total United States electric load.[1]

This paper updates a 2010 report by the COMPETE Coalition entitled *Customer Choice in Electricity Markets: From Novel to Normal.* [2]

That 2010 report reviewed the development of retail electric choice from 2003 through the first half of 2010. During that period retail electric choice evolved from an experiment with many doubters to a durable, proven feature of the electric industry.

This 2012 updated analysis depicts a vibrant retail electric choice market, focusing on

- the strong performance of retail choice during a period of serious economic stress;
- the reasons why retail choice has proven to be a sustainable construct that can continue to provide consumers real value;
- the core market features that are critical to supporting the expansion of choice to other states; and
- what is likely to follow this huge expansion of retail choice.

As with the original 2010 report, this update relies substantially on data from the global consulting and information firm, KEMA, the U.S. Energy Information Administration (EIA) and the Annual Baseline Assessment of Choice in Canada and United States (ABACCUS) report produced by the Distributed Energy Financial Group.[3]

PERFORMANCE AND PROSPECTS

Through retail electric choice, millions of residential, business and governmental electricity customers have benefitted from reasonably priced electricity, innovative products and services, greater flexibility and opportunities to capture efficiencies.

State policy makers and utility regulators have removed several legacy obstacles to retail electric choice such as rate caps, poorly designed delivery rates and lack of access to utility billing services for small customers. Regulators have achieved greater consistency in competitive market rules across different utilities within their states. Based on shared experience and learning, the states also have harmonized rules with one another, facilitating even more cost efficient customer service by multi-state competitive energy suppliers. Notably as well, most utilities in electric choice jurisdictions accommodate and support customer choice. For example, the increased focus of utilities and regulators on emerging innovative technologies such as "smart meters" will promote customer choice alongside energy efficiency.

The surge in retail electric choice has not been uniform, however. In several states, most notably California, Michigan, Montana and Oregon, while some customers have access to choice, the rules still prevent most customers from exercising choice.[4] These customers, therefore, cannot access the lower prices and greater contractual flexibility that characterize retail electric choice. California is moving cautiously in the direction of gradually reopening customer choice.[5] Since 2009, it has allowed relatively small amounts of commercial and industrial load to switch to competitive suppliers. Notably, during the four limited enrollments conducted to date, "the amount of space available was reached essentially instantaneously".[6] Recently, Arizona has taken steps to open the door a bit for competitive supply arrangements for large customers up to a total cap of 200 MW.[7] In contrast, Nevada and Virginia have not yet reversed the suspension of customer choice implemented a number of years ago.[8]

While some resistance remains to customer choice, opponents of retail electric choice now rarely argue for rolling back choice in the 18 competitive jurisdictions, as any such efforts would be strongly opposed by the many satisfied shopping customers. Nor can critics argue that service levels and reliability will degrade under choice as experience has proven otherwise. Another demonstrated benefit of retail electric choice is that while millions of customers of monopoly-regulated utilities must pay rates based on legacy cost structures, customers in jurisdictions with retail electric choice can rapidly avail themselves of falling wholesale electric prices which reflect reduced demand and dramatically increased supplies of low cost natural gas, among other factors.[9]

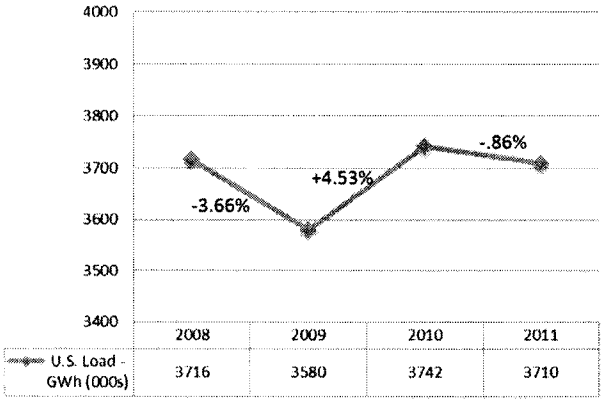
The surge in retail electric choice and the underlying reasons for that surge warrant renewed consideration of providing access to captive customers everywhere. As competitive choice models evolve, they can serve as a basis for a transition to choice in new states seeking favorable opportunities and increased benefits for their consumers.

THE ACID TEST FOR ELECTRICITY CHOICE

The acid test for any business or industry is not only whether its customers buy and like the service or product, but also how well it performs during a period of general economic stress. In the midst of the most significant downturn in the U.S. economy since the Great Depression, retail electric choice is passing that test with flying colors.

Rapidly increasing numbers of consumers of all sizes have exercised electric choice at the same time electric usage in the United States has essentially flat-lined during the recent economic doldrums. As represented in Charts 1 and 2, between 2008 and the fourth quarter of 2011, although overall electric usage in the continental United States declined by slightly less than 1% (Chart 1), retail choice in the 18 choice jurisdictions surged by 40% (Chart 2).

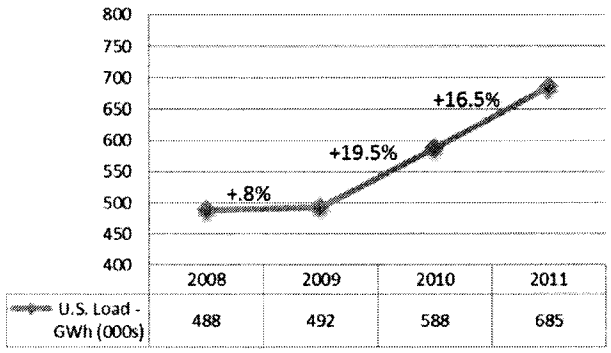
Chart 1: No Growth in Total Continental U.S. Electricity Load 2008-2011



	2008	2009	2010	2011
U.S. Load - GWh (000s)	3716	3580	3742	3710

Source: U.S. Energy Information Administration (EIA)

Chart 2: 40% Growth in Retail Competitive Electricity Load (18 Jurisdictions) 2008-2011 (% year over year)



	2008	2009	2010	2011
U.S. Load - GWh (000s)	488	492	588	685

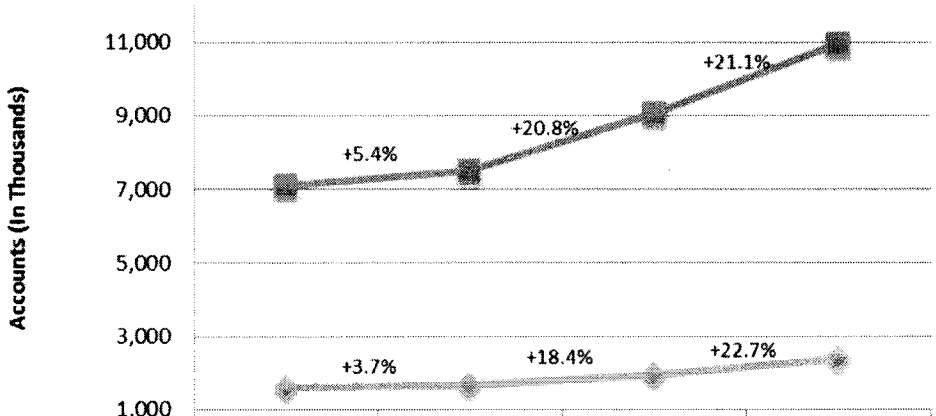
Source: KEMA Retail Energy Outlook, January 2012

Customarily, retail electric choice development has been in the non-residential customer segment, which accounts for more than three-fifths of electric usage in the country. This sector, often referred to as commercial and industrial (C&I) customers, includes factories, commercial businesses and buildings, educational and medical facilities and a wide range of governmental and public service functions.

Notably, however, smaller businesses are increasingly migrating to choice as larger customers demonstrate the benefits of choice and as competitive suppliers expand their marketing efforts. In addition, since 2009, there has been a tremendous increase in shopping among residential customers, both through individual supply contracts and through competitive aggregation programs. States have lowered regulatory hurdles to facilitate engagement between residential customers and competitive suppliers. With increasing uniformity in the rules-of-the-game, residential customers have demonstrated an appetite for savings, innovation, flexibility and efficiency.

As shown in Chart 3 below, since 2008, the total number of customer accounts served under choice arrangements grew by over 53% to over 13.3 million. Residential accounts served by competitive suppliers have increased by over 3.8 million, or over 54%, to nearly 11 million. The number of non-residential accounts served competitively has increased by over 800,000 to nearly 2.4 million – a jump of more than 50%.

Chart 3: 53% Growth in Competitive Retail Electricity Customer Accounts 2008-2011 (% year over year)



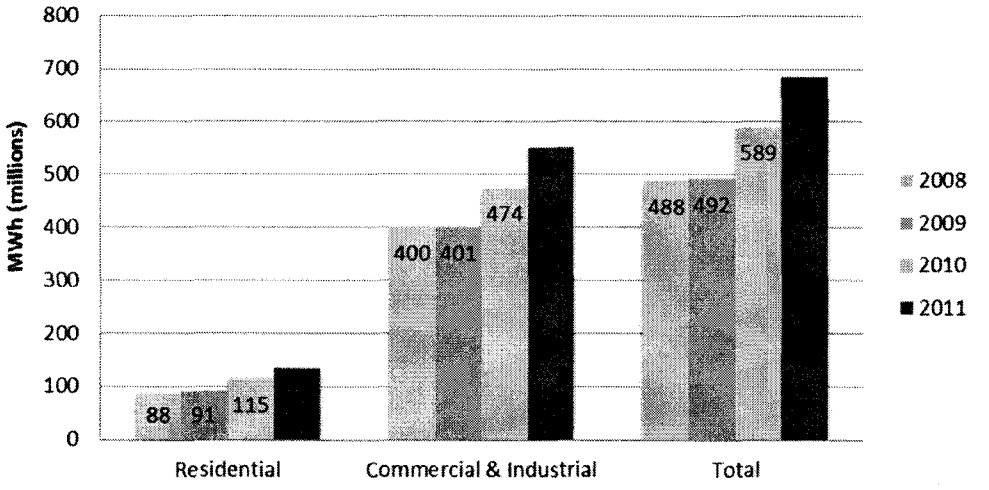
	2008	2009	2010	2011
Residential	7,111	7,493	9,049	10,957
C & I	1,583	1,641	1,943	2,385

Source: KEMA Retail Energy Outlook, January 2012

KEMA calculates that, by the fourth quarter of 2011, an annualized volume of about 685 million MWh of electric load was being competitively served in the United States. As indicated in Chart 4 below, the residential market accounted for 134 million MWh and the commercial/industrial segments accounted for 551 million MWh. In just the three years between 2008 and 2011, residential electric load served competitively increased 52.6% and commercial-industrial load by 37.8%. In no year did total electric load served under competitive supply contracts decline.

Table 1 in the Appendix details 2011 competitive volumes in each of the 18 retail electric choice jurisdictions as a percent of eligible electric load and as a percent of total end-use consumption.

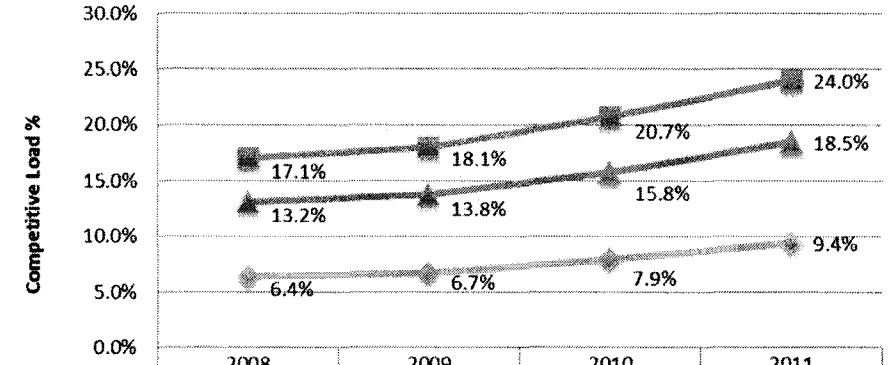
Chart 4: Annual Retail MWH Competitive Electricity Load by Customer Class (2008-2011)



Source: KEMA Retail Energy Outlook, January 2012

Shopping in the 18 retail choice jurisdictions now comprises over 33% of eligible commercial and industrial accounts, representing more than 68% of non-residential electric load, and more than 22% of eligible residential customer accounts, representing more than 31% of residential usage.[11] In 2011, 18.5%, or almost one out of every five kWh consumed in the United States was served competitively (as depicted in Chart 5 on the following page) and there is little doubt that in 2012 the 20% threshold will be crossed. This is a remarkable transformation in little more than a dozen years for an industry characterized for a century by vertically integrated monopoly utilities.

Chart 5: Competitive Load as a % of Total Continental U.S. (2008-2011)



	2008	2009	2010	2011
C & I	17.1%	18.1%	20.7%	24.0%
Total	13.2%	13.8%	15.8%	18.5%
Residential	6.4%	6.7%	7.9%	9.4%

Source: KEMA Retail Energy Outlook, January 2012 and EIA

RETAIL COMPETITION GIVES CONSUMERS ACCESS TO THE BENEFITS OF COMPETITIVE WHOLESALE ELECTRIC MARKETS

The expansion of retail electric choice in the United States in an otherwise challenging economy is no accident. As competition advocates predicted at the outset, robust, well-functioning competitive wholesale electric markets allow prices to adjust quickly to reflect supply and demand realities.

Over one-third of electric generation in the country is now supplied by independent (non-utility) power plants. Wholesale power transactions, which include both sales from independent power plants and sales from utility-owned generating stations to other utilities or to competitive retail suppliers, are almost all market-priced rather than rate-regulated by the Federal Energy Regulatory Commission (FERC).

Wholesale prices have declined substantially. Flat demand due to a slow economy and more efficient electric use by consumers across the board has reduced prices. Even more important has been the dramatic fall in natural gas prices due to abundant domestic supplies.[12]

Most significantly, competitive retail electric markets enable consumers to benefit quickly from lower wholesale prices.[13] In contrast, customers in monopoly-regulated markets do not, and cannot, see these price signals. Indeed, an inescapable paradox in monopoly utility regulation is that when supply exceeds demand (and other factors are held constant), prices do not decline, but must increase to cover fixed costs.

Michigan, where retail choice is limited in the two major utility service areas to 10% of total electric load, provides a compelling example of the problem. Since Michigan enacted the 10% limits in 2008, incumbent utilities have increased generation rates at the very same time wholesale electric prices decreased significantly.

C&I customers account for all of the approximate 9.25 million MWh that Consumers Power and Detroit Edison (DTE) report as served competitively.[14] In the hope of escaping higher fixed utility rates which do not reflect declining wholesale prices, well over 7,000 C&I customers, accounting for 6.5 million MWh of load, have joined long waiting lists seeking to access the lower prices available only to the fortunate customers who made it under the 10% cutoff.[15]

The C&I customers who must buy their electric supply from the local utilities pay between 6.5¢ and 8.5¢/kWh, excluding delivery, depending on customer size and utility territory. Conservatively estimating the average utility supply at 7¢/kWh versus a conservative estimate of 5¢/kWh for market-priced supply, represents a 2¢/kWh difference. Applying that 2¢ differential to just the 6.5 million MWh of load for the 7,000 customers on the Consumers and Detroit Edison waiting lists, represents lost savings annually of $130 million, massive savings these customers could otherwise invest to grow their businesses in Michigan. Fueling the rapidly growing waiting lists are many thousands of other customers who would leap at a savings of 2¢/kWh – and the resulting multiple millions of dollars in savings.

Market prices, however, are not the sole driver of vibrant, competitive retail electric markets. Competitive suppliers also offer innovative products and services, contractual terms, information, efficiency and supply portfolios to match their customers' individual needs.[16] Energy price risk can be managed in ways consistent with a customer's risk tolerance. Contractual periods can vary widely, from hourly to multi-year, and customers can select among clean energy options. Residential customers are starting to see pre-pay and other conveniences. Such innovative options, if available at all from traditionally regulated utilities, are generally reserved for only the largest customers.

NEW CHOICE STORIES – SUSTAINED DEVELOPMENT AND SUSTAINABLE RESULTS

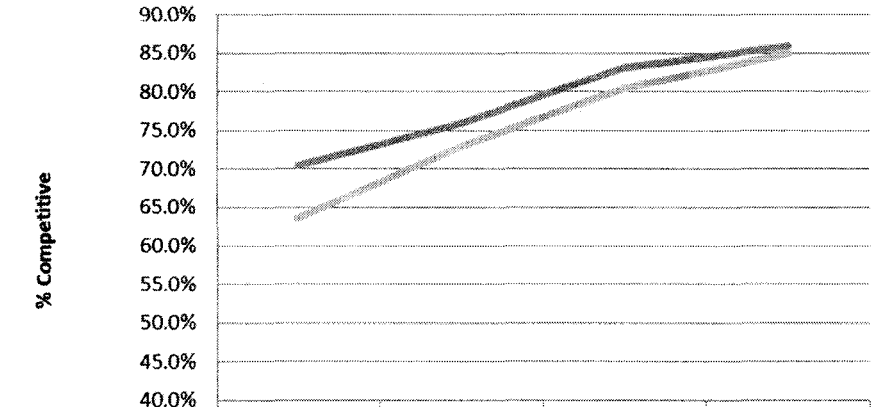
This updated report pays special attention to seven jurisdictions. Four states offer important examples of substantial progress since 2008 in both C&I and residential choice: Connecticut, New Jersey, Ohio and Pennsylvania. Two other states, Illinois and Maryland, which have had strong C&I choice markets for some time, are now experiencing significant growth in residential choice. Finally, since 2008, Rhode Island has doubled the level of C&I customer load served competitively. Other states such as Texas and New York have also experienced strong progress during the period but are not reviewed in-depth in this report.

Connecticut: Residential Customers and C&I in Tandem

Although Connecticut introduced retail electric choice in 1998, it was not until 2006 that choice began to take hold. In most states, larger C&I customers have been the first to embrace choice, followed several years later by residential customers. In Connecticut, however, choice among C&I and residential customers has grown largely on parallel paths. While C&I customers have accessed competitive opportunities in greater proportions than have residential customers nationally, the trends in Connecticut have been well correlated. This is due in large part to the state's implementation of market-based utility standard offer service that is priced and acquired through a competitive process with laddered portfolios.

Chart 6 below shows that between 2008 and 2011, the percentage of eligible C&I electric load served competitively rose from 63.6% to 84.9% for Connecticut Light and Power (CL&P), and from 70.5% to 85.9 for United Illuminating (UI). Further, Chart 7 on the following page shows that during the same time period, percentages for residential choice rose from 6.6% to 44.2% for CL&P and from 9.9% to 52% for UI.

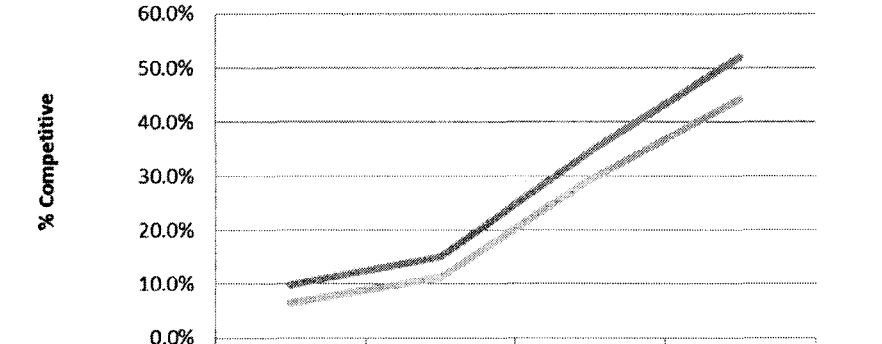
Chart 6: Connecticut
% of Eligible C & I Load Served Competitively (2008-2011)



	2008	2009	2010	2011
United Illum. Co.	70.6%	75.9%	83.2%	85.9%
CT L&P	63.6%	73.0%	80.4%	84.9%

Source: KEMA Retail Energy Outlook, January 2012

Chart 7: Connecticut
% of Eligible Residential Load Served Competitively (2008-2011)



	2008	2009	2010	2011
United Illum Co.	9.9%	15.1%	34.7%	52.0%
CT L&P	6.6%	11.3%	29.5%	44.2%

Source: KEMA Retail Energy Outlook, January 2012

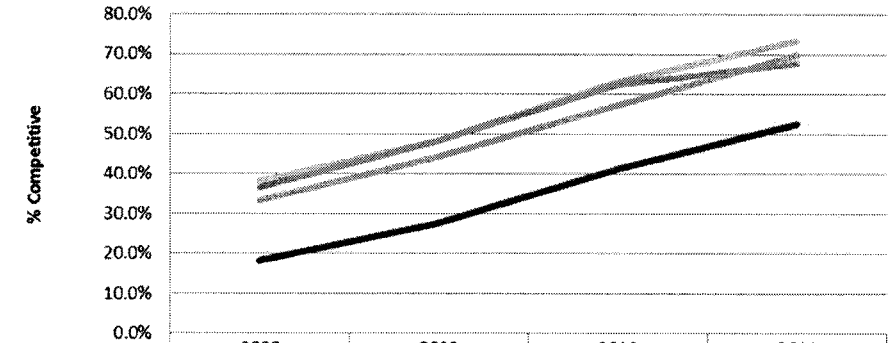
Furthermore, Connecticut regulators have played a direct role in helping facilitate customer education and in linking residential and small business customers with competitive providers through the CTEnergyInfo website.[17] In addition to the list of competitive providers and frequently-asked-questions customarily found on utility regulatory websites, the Connecticut website provides residential and small business customers with the opportunity to easily compare prices across the full range of options, including competitive and utility standard offer supply, differing levels of renewables content and several fixed and variable-priced products.

New Jersey: A Garden State for Electricity Choice

Since implementing choice a decade ago, New Jersey has had a more typical growth pattern than Connecticut's, with non-residential customer choice growing fairly steadily, but residential choice only recently taking hold.

As represented in Charts 8 and 9 below, between 2008 and 2011, eligible C&I load served competitively across the state's four utility service areas rose from between 18% and 38% to between 52% and 73%, whereas only in the past year has residential choice increased, from 1% in 2008 to between 8% and 14% in those four utility service areas in 2011.

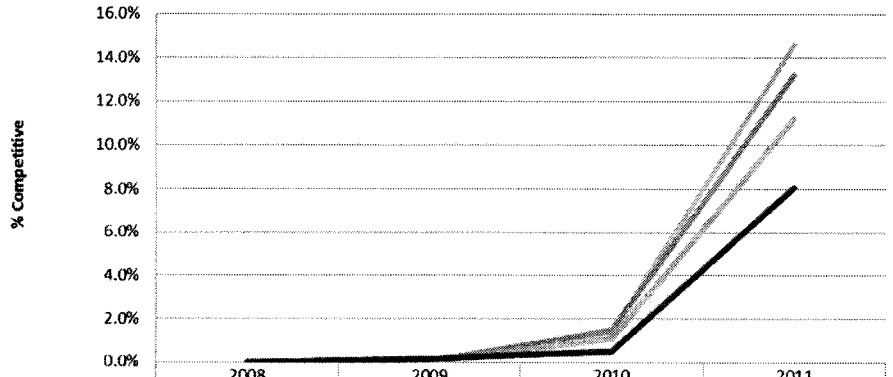
Chart 8: New Jersey
% of Eligible C & I Load Served Competitively (2008-2011)



	2008	2009	2010	2011
Atlantic City	38.3%	48.4%	63.2%	73.4%
Jersey Central	36.6%	48.3%	62.5%	67.8%
PSEG	33.3%	44.4%	57.3%	69.9%
Rockland	18.2%	27.6%	41.3%	52.5%

Source: KEMA Retail Energy Outlook, January 2012

Chart 9: New Jersey
% of Eligible Residential Load Served Competitively (2008-2011)



	2008	2009	2010	2011
Atlantic City	0.0%	0.0%	1.4%	14.6%
Jersey Central	0.0%	0.0%	1.5%	13.2%
PSEG	0.0%	0.0%	1.1%	11.2%
Rockland	0.0%	0.1%	0.5%	8.1%

Source: KEMA Retail Energy Outlook, January 2012

Once again, access to more market-reflective pricing has been key. Since the 2008 auction, larger industrial and commercial customers have had only hourly service available for default service, but residential and small business customers had fixed-price standard offer service comprising a composite of three years of procurement auctions. The most recent New Jersey procurement in early February 2012, which secured wholesale supply for all investor-owned utilities from numerous wholesale suppliers, resulted in reduced standard offer prices. Nonetheless, prices under the laddered procurements may well encourage more residential and small business customers to shop to obtain prices based on the current wholesale market.

Ohio – Utility Affiliates and Municipal Aggregation

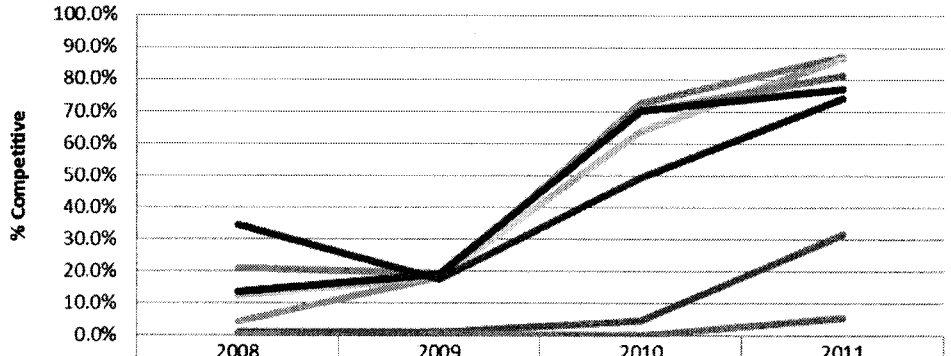
The surge in electric choice in Ohio underscores the basic reality that electric choice is a state-by-state, utility-by-utility phenomenon.

The Public Utilities Commission of Ohio (PUCO) conducts heavily contested reviews of each utility's "Electric Security Plan." Two key factors suggest Ohio will remain committed to increasing competition rather than reinstating traditional cost-of-service ratemaking. First, the emergence of large shale gas supplies in Ohio and neighboring Pennsylvania indicates long-term low natural gas prices will continue to mitigate wholesale power prices. Further, with some Ohio utilities firmly committed to choice, others that may remain ambivalent will find it extremely difficult to recreate the *status quo ante* if the result would be that some Ohio customers would be free to choose while others are held captive.

Second, municipal aggregation in Ohio is moving thousands of residential customers from utility-bundled service to market-priced power provided through their local governments and delivered by the utility. These municipal aggregation programs, with opt-out provisions permitting customers to shop for better individual deals with competitive suppliers, are one of ways the competitive market can deliver reasonably priced, reliable electricity.

As shown on the following page in Charts 10 and 11, although the surge in retail choice in Ohio has been uneven to date, it is nonetheless impressive and likely augurs continued growth. First, a majority of C&I load statewide has shifted to competitive market supply, with more than three-fourths of C&I load having switched in all utility territories other than the two served by American Electric Power affiliates. Second, more than two-thirds of residential load in First Energy's three utility service areas is being served competitively. In the Duke-owned Cincinnati Gas & Electric service area, more than a third of residential load has switched.[18]

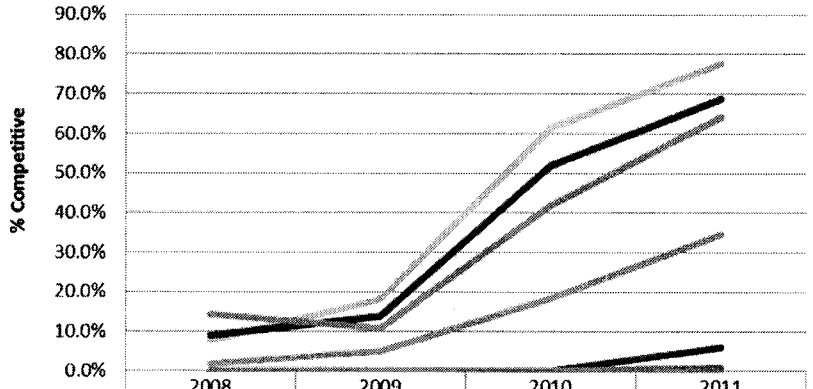
Chart 10: Ohio
% of Eligible C & I Load Served Competitively 2008-2011



	2008	2009	2010	2011
CG&E	4.3%	18.2%	72.4%	87.2%
Cleveland	12.5%	18.0%	63.7%	86.7%
Ohio Edison	20.9%	19.5%	69.9%	81.1%
Toledo Edison	13.5%	19.0%	70.4%	77.0%
Dayton P & L	34.4%	17.4%	49.5%	74.2%
Columbus & So.	1.0%	1.1%	4.7%	31.5%
Ohio Power	0.0%	0.0%	0.0%	5.5%

Source: KEMA Retail Energy Outlook, January 2012

Chart 11: Ohio
% of Residential Load Served Competitively 2008-2011



	2008	2009	2010	2011
Cleveland	7.8%	18.3%	61.5%	77.7%
Toledo Edison	9.1%	13.9%	52.0%	68.7%
Ohio Edison	14.5%	11.0%	41.9%	64.3%
CG&E	1.7%	5.1%	18.4%	34.4%
Dayton P & L	0.0%	0.0%	0.0%	6.0%
Columbus & So.	0.0%	0.0%	0.0%	0.8%
Ohio Power	0.0%	0.0%	0.0%	0.1%

Source: KEMA Retail Energy Outlook, January 2012

Pennsylvania – Vigorous Regulatory Leadership

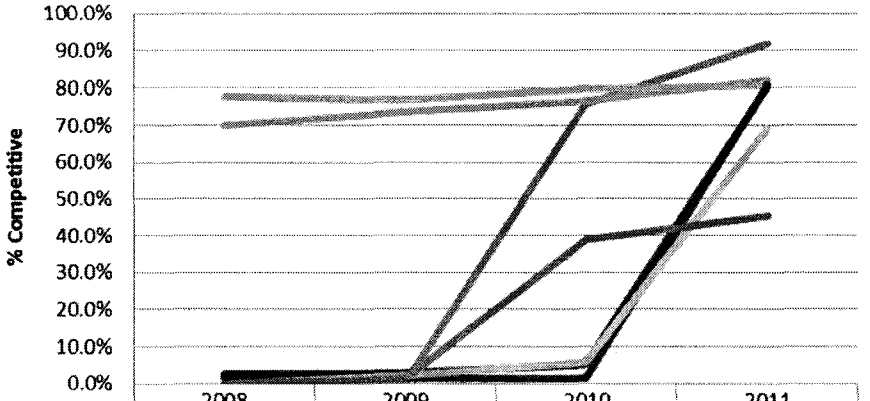
Pennsylvania, like Ohio, illustrates that development of retail electric choice usually precedes utility-by-utility until success prompts greater statewide uniformity in the rules of the game. Pennsylvania also helps reminds us that support for retail electric choice has been bipartisan, just as has been the case with federal support for competitive wholesale markets. Successive Pennsylvania administrations, Democratic and Republican, have supported retail electric choice. The current Pennsylvania Public Utility Commission (PUC) is seeking to enhance default service structure, rules and processes to further increase shopping and harmonize rules-of-the game across utilities.

After rate caps terminated statewide at the end of 2010, implementation of utility purchase of receivables (POR) and utility consolidated billing (UCB) reduced duplicative transaction costs, helping enable suppliers to optimize the benefits of competitive wholesale markets for their retail customers.

The Pennsylvania PUC's active role as educators as well as regulators has contributed substantially to the growth of retail electric choice. Over several years, PUC members traveled widely to explain and encourage retail electric choice, visiting with a wide range of business and community organizations and with the news media.

During the past three years, the growth in retail electric choice in both the C&I and the residential segments has been stunning. In fact, as shown in Chart 12, C&I electric load in Pennsylvania will likely become totally competitive over time.

Chart 12: Pennsylvania
% of Eligible C & I Load Served Competitively 2008-2011

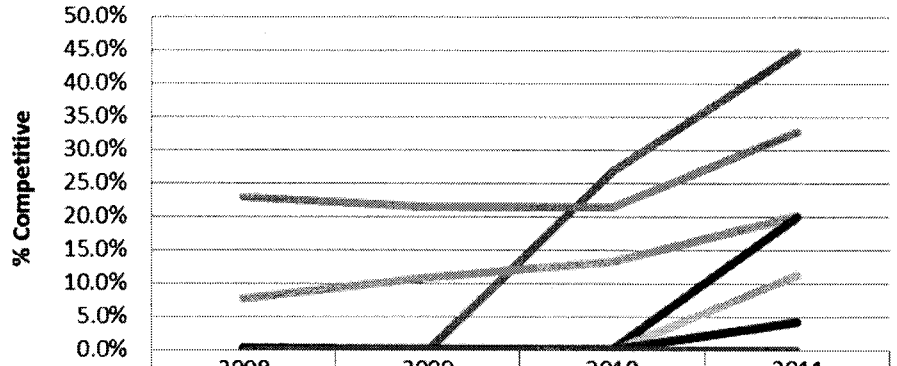


	2008	2009	2010	2011
PPL	0.1%	0.1%	75.6%	92.0%
Duquesne	69.8%	73.4%	76.4%	82.1%
Penn Power*	77.6%	76.7%	79.7%	80.7%
Peco	1.8%	1.5%	1.5%	80.5%
MetEd / Penelec*	2.5%	2.9%	5.2%	80.5%
West Penn*	0.0%	2.2%	5.9%	69.2%
UGI	0.0%	1.4%	38.9%	45.3%

Source: KEMA Retail Energy Outlook, January 2012
**First Energy*

Even without municipal aggregation, many Pennsylvania residential customers have switched to competitive suppliers since rate caps expired. As depicted in Chart 13 below, about one-fourth of the residential load in the Duquesne Light service area is shopping. PPL residential choice already is about 45% and in PECO over 20% of residential load has switched. Increasing numbers of residential customers in the three First Energy utility areas are shopping. Customers in UGI, a very small utility, however, have yet to enter the choice arena.

Chart 13: Pennsylvania
% of Eligible Residential Load Served Competitively 2008-2011



	2008	2009	2010	2011
PPL	0.0%	0.0%	26.8%	44.8%
Duquesne	23.0%	21.3%	21.4%	32.7%
Penn Power*	7.7%	10.8%	13.2%	20.2%
Peco	0.2%	0.2%	0.2%	19.9%
West Penn*	0.0%	0.0%	0.0%	11.2%
MetEd / Penelec*	0.0%	0.0%	0.0%	4.3%
UGI	0.0%	0.0%	0.0%	0.0%

Source: KEMA Retail Energy Outlook, January 2012
**First Energy*

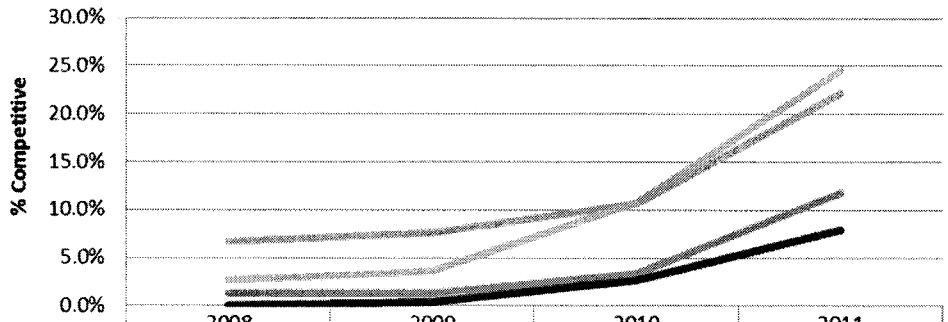
Maryland and Illinois: Unlocking the Door for Residential Customers

Maryland and Illinois have had fairly similar experiences with the development of retail electric choice, with early shopping by C&I customers in most utility areas, but delayed residential switching.

Competitive suppliers serve well over three-fourths of all eligible non-residential load in both states, with more than half of all electric consumption in each state shopping. Since 2008, both states now have also promoted greater residential shopping by implementing POR and UCB. The Maryland Public Service Commission authorized UCB and POR for residential suppliers in 2008 and implemented both in mid-2010. Similarly, after lengthy proceedings and negotiation among utilities and competitive suppliers, Illinois implemented POR and UCB for residential customers in mid-2011.

Chart 14 below illustrates that in Maryland's four utility service areas, shopping has moved from a range of zero to less than 7% in 2008 to about one-fourth of residential load switching to choice in Baltimore Gas & Electric and PEPCO, the state's two largest utilities. One indication of the considerable momentum behind residential choice is that over a dozen licensed competitive suppliers are actively marketing to residential customers in Maryland.[19]

Chart 14: Maryland
% of Eligible Residential Load Served Competitively 2008-2011



	2008	2009	2010	2011
Pepco	6.6%	7.6%	10.7%	22.2%
BG & E	2.7%	3.6%	10.8%	24.6%
Delmarva	1.3%	1.3%	3.3%	11.8%
Potomac Edison	0.0%	0.4%	2.7%	7.9%

Source: KEMA Retail Energy Outlook, January 2012

In Illinois, UCB and POR have had an immediate and significant impact. In the Commonwealth Edison service territory that accounts for about 80% of Illinois electricity consumption, residential choice has gone from near zero at the start of 2011 to 6.5%. Two dozen alternative retail electricity suppliers (ARES) have completed the licensing process with the Illinois Commerce Commission to serve residential customers.[20]

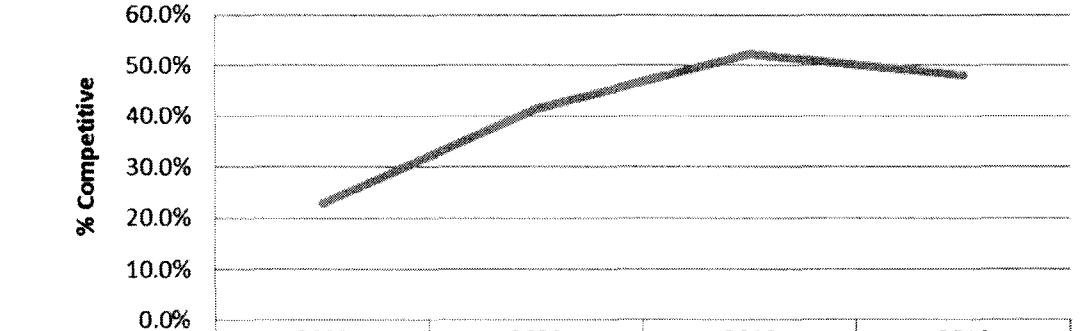
Municipal aggregation is poised to play a significant role in Illinois. So far, 20 municipalities have qualified under the aggregation law. In the 2012 primary and general elections, 277 local referenda are scheduled to decide whether local governments will enter the competitive electric market on behalf of their residential customers.[21]

The Illinois experience with electric industry restructuring is an interesting case study in the ongoing effort to better understand the impact of restructuring on prices. Table 2 in the Appendix illustrates the ratio of average, all-in electric prices, including delivery, paid by all end-use customers in Illinois to the average prices for all U.S. consumers in the 21-year period 1990-2011. Prior to the introduction of retail competition, average Illinois electric prices had consistently been higher than the national average. Retail electric choice was phased in over a several year period starting in October 1999 and by 2001, average Illinois electric prices had fallen below the national average and have stayed lower every year since.

Rhode Island: First in the Field

Rhode Island was the first state in the country to deliver a kilowatt-hour of competitive retail electricity in July 1997.[22] Rhode Island's pathway to increased electric choice can best be understood as part of the general and simultaneous migration of the New England region to industry restructuring. There is no spectacular story to tell about this small jurisdiction other than there has been slow but steady growth in retail choice since its commencement. As indicated in Chart 15 below, since 2008 the share of eligible C&I load served competitively has doubled, however, there was a slight downturn in the percentage of eligible load served in 2011.

Chart 15: Rhode Island
% of Eligible C & I Load Served Competitively 2008-2011



	2008	2009	2010	2011
Narragansett	22.9%	41.5%	52.3%	48.0%

Source: KEMA Retail Energy Outlook, January 2012

RULES-OF-THE-GAME MAKE THE DIFFERENCE

As highlighted in COMPETE's 2010 report, fair, uniformly applied rules-of-the-game designed to create and maintain a level playing field for competition are the mainstay of sustained growth of retail electric choice. The many examples of substantial progress detailed in this 2012 update can be attributed in great part to competitive jurisdictions uniformly applying clear rules-of-the-game. Texas provides an outstanding example of the importance of establishing uniformly applied pro-competition rules-of-the-game.

Rather than constructing a hybrid model mixing legacy monopoly structures and processes with retail electric choice, Texas committed fully to disconnecting the delivery utility itself from responsibility for supply. Policy makers and regulators in Texas have stayed the course even as energy prices fluctuated. Texas now has several years of successful experience with 100% of customers in investor-owned utility delivery service areas securing their supply from a combination of competitive suppliers which serve three-fourths of all energy load and utility affiliates separate from the wires company serving the remainder, mainly residential and small business.

Customer choice has also flourished in New York. New York has proven states can achieve substantial growth in retail electric choice on a utility-by-utility basis without leveraging specific restructuring laws. New York has robust C&I customer switching rates comparable to those in other states with active retail choice programs, and has experienced strong residential shopping, with several utilities having between a fourth and a third of their residential customer load served competitively.

Stable regulation and ***clear rules*** now characterize the great majority of the 18 retail electric choice jurisdictions examined in this report. To enable sustained growth in choice, regulators and policymakers set clear goals and policies, and adjust them only as needed to stay on target. Generally, over the past decade, regulatory developments have been positive in most retail electric choice markets. There are exceptions, however, such as California and Michigan, where regulatory changes that limit shopping have seriously disrupted the progression of customer choice.

In 2012, ***wholesale competition, open transmission access*** and *organized regional wholesale power markets* are widely accepted. Importantly, even among those who continue to oppose retail electric choice, there is a growing acceptance of robust wholesale competition, open access to transmission and the establishment of organized regional wholesale power markets. The potential problems cited in the past by skeptics of open access and organized regional markets have not materialized and reliability has been maintained. Further, prices have responded promptly to market conditions, conveying accurate signals to market participants, while market operation rules continue to be fine-tuned.

At the Federal level, FERC has stayed the course with the strong commitment to competitive market reforms it has pursued since the 1980s under both Democratic and Republican administrations and differing Congressional majorities.

At the state level there are five key conditions that continue to frame the opportunity for customers and competitive suppliers to fully and effectively engage with one another.

Cost-based delivery rates have evolved in most jurisdictions, replacing bundled rates that discriminated between retail electric choice customers and those remaining on utility default service. In contrast with non-retail choice states, competitive states work hard not to co-mingle costs and pricing for delivery and supply services for customers who continue to take supply service from the local utility.

Market-based default service has had the most substantial impact on the growth of retail electric choice. The elimination of stranded cost charges from generation rates, rate caps or other artificial price interventions and supply cross-subsidies has highlighted for consumers the direct link between the market price of generation and retail rates. Increasingly, policy makers in competitive retail electric markets have recognized the value of promoting supply procurement protocols for default service that better reflect market conditions.

Customer Data and Electronic Data Interchange (EDI) arrangements have become more routine and effective, with large numbers of competitive suppliers ably participating in sophisticated data exchange with utilities and, in turn, with customers. The growing commitment to Smart Grid deployment, including advanced metering infrastructure (AMI), holds substantial potential for timely, multilateral communication among customers, suppliers and delivery utilities. As noted elsewhere in this paper, KEMA and ABACCUS have highlighted the growth of innovative service offerings in parallel with the surge in customer choice.[23]

Utility Consolidated Billing (UCB) and Purchase of Receivables (POR) have proven to be linchpins for the growth of residential customer choice, as they help mitigate transaction costs which otherwise would deter supplier participation. UCB and POR help leverage transaction efficiencies in metering, billing, capital formation and risk management. In Maryland, Pennsylvania and Illinois, for example, implementing UCB and POR in recent years has supported a rapid expansion of residential choice.

Customer Education and the Promotion of Choice increasingly have migrated from state regulators to competitive suppliers, utilities and customers themselves, with regulators focusing primarily on monitoring, data collection, and developing and enforcing market rules. C&I customers no longer require guidance or positive reinforcement from regulators. The current educational mission is to promote residential and small non-residential customers shopping by providing them efficient access via the web to pricing and other terms so they can easily compare to default offerings. The Internet has become a standard conduit for electric shopping as it has for most other products. The November 2011 ABACCUS report notes that as retail electric choice markets mature, it may be enough for regulators to host websites and otherwise facilitate transparency and access for customers to competitive suppliers.[24] Municipal aggregation programs in Ohio and Illinois also can facilitate switching and access to choice for residential and small business customers. Customers can opt-out and choose to remain on utility default service or elect individually to go with a competitive retail supplier.

State regulators, retail suppliers, customers and distribution utilities have improved their support of these five conditions by learning from their own experiences as well as those in other jurisdictions. Although retail choice will continue to have a state-by-state, utility-by-utility flavor, the ongoing harmonization of market rules and processes with increasingly similar rules-of-the-game will encourage greater consumer and supplier participation.

EMBEDDING ELECTRICITY CHOICE

The year 2012 may one day be recognized as when electricity choice became firmly embedded across the full range of customer classes. It has become increasingly clear that any remaining objections to retail electric choice are less about the interests of customers than about the interests of other parties.

There are several reasons. First and foremost, far larger numbers of residential customers are likely to exercise choice and C&I customers will continue to want unobstructed access to favorable wholesale prices. Second, fewer states with competitive retail markets see a need to provide ongoing comprehensive utility-based supply service. Third, competitive retail electric supply's growing market share and strong empirical evidence of its success will counter customer choice opponents and skeptics.

With the solid record of electric choice during the 2008-2011 economic downturn, consumers and suppliers will likely place increasing pressure on policy makers and regulators in California, Michigan, Montana and Oregon to restore their full right to shop. Pressure will grow for Arizona, Nevada and Virginia, once on the path to choice, to reconsider policies preventing retail electric competition, given the demonstrated benefits enjoyed by consumers in choice states.

The benefits of choice in the 18 jurisdictions with retail electric choice highlight to consumers in monopoly states that the time has come to allow them to shop for competitive retail electric service as they already do for most services.

Market maturity has expanded retail electric choice from the largest commercial and industrial customers to small businesses and residential consumers. The complete transition in Texas from vertically-integrated investor-owned utility monopolies to a fully competitive model of suppliers separate from distribution utilities has demonstrated that retail electric choice is workable for all customer classes. Other states, New York among them, reinforce the growing empirical evidence that a restructured electricity industry serves all customers well.

LOOKING AHEAD

In just the past decade, retail electric choice has transformed an industry that for a century was predicated on the certainty of regulated electric monopolies. The 18 domestic choice jurisdictions are not alone in this transformation. Many European Union members rely to a considerable extent on retail electric choice and competitive wholesale power markets, as does much of the highly developed English-speaking world from Britain to Australia and New Zealand.

The most recent significant movement toward competition in the electric industry is Japan's decision to introduce customer choice and supply competition in the wake of the 2010 tsunami and resulting nuclear power crisis. Constricted energy supplies and concerns about outdated management and safety practices rooted in a monopoly industry structure have prompted the Japanese government to actively consider competitive reforms of the industry.[25]

Widespread acceptance of deploying innovative Smart Grid technologies across the network has paralleled the surge in electric choice. Beyond improvements in reliability of delivery service, including outage prevention and faster outage recovery, Smart Grid technologies can dramatically expand the capabilities of customers to interact with the network and the market. The arrival of the digital revolution will be just as technologically transformative for the electric industry as it has been for the telecommunications sector.

Residential and C&I customers, surrounded by intelligent appliances and equipment interacting with the network and the electric market, will be empowered as never before. The traditional one-way relationship of the electric industry to customers will become a multilateral communications network. Customers will be able to consume power when it is most efficient or environmentally responsible to do so and can contribute to improved capacity factors and a more stable and reliable power grid through well-timed demand response.

Innovative Smart Grid technologies will help render the arguments of choice skeptics even more obsolete, both technologically as well as economically. As Smart Grid technologies emerge, the entire range of customers, from the most sophisticated large industrial and commercial to small businesses and homeowners, will have easy access to the information required to manage their energy usage and make informed choices. All customers will be able to choose from many innovative options ranging from real-time to fixed-price fully hedged supply. These increasing customer benefits will ensure sustainable growth for retail electric choice.

APPENDIX

Table 1 below shows the volume of retail electric load as a percentage of load actually eligible for retail choice and as a percentage of total electric load in each of the 18 jurisdictions. In some states, municipal utilities and rural cooperatives serve significant load and therefore the percentage of total load served competitively may be considerably smaller than the percentage of eligible load in investor-owned utilities.

TABLE 1

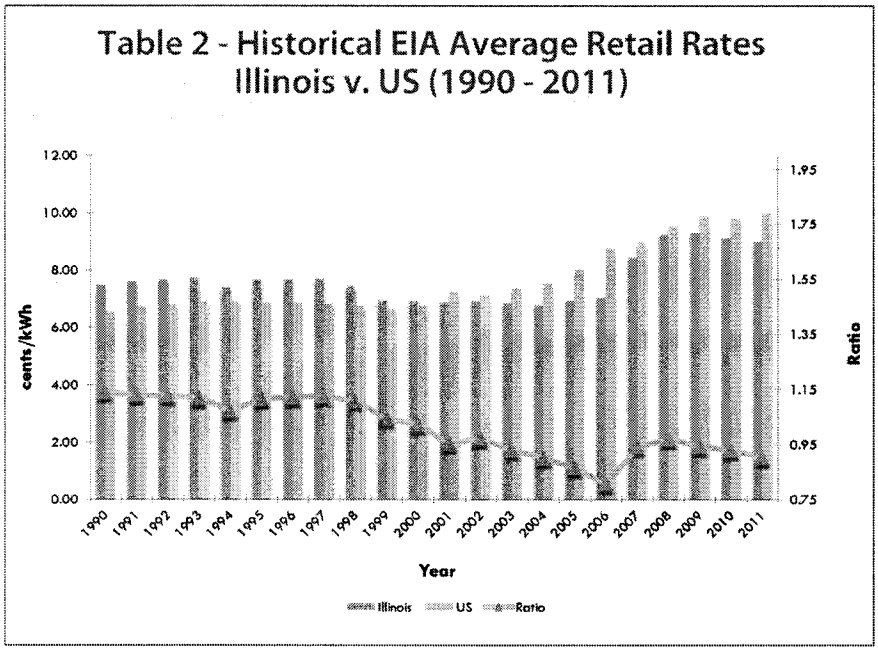
2011 GWh KEMA Reported Competitive Sales as Percent of 2011 Eligible Load & as Percent of EIA Reported Total Statewide C&I or Residential Load

Jurisdiction	Non-Residential Competitive Load			Residential Competitive Load		
	GWh	Eligible %	Total %	GWh	Eligible %	Total %
California	21,939	17.80%	13.40%	101	0.10%	0.10%
Connecticut	13,363	85.20%	78.90%	5,583	45.60%	43.00%
Delaware	4,068	75.00%	62.00%	115	3.80%	2.50%
DC	8,318	83.90%	87.50%	127	6.30%	6.20%
Illinois	71,406	80.00%	75.20%	2,211	5.40%	4.70%
Maine	4,541	68.60%	64.50%	24	0.60%	0.50%
Maryland	28,514	81.70%	78.50%	5,056	20.70%	18.50%
Massachusetts	23,094	76.20%	64.50%	2,199	12.70%	10.50%
Michigan	7,999	100.00%	11.50%	0	0%	0%
Montana	2,453	100.00%	27.60%	1	0%	0%
New Hampshire	3,380	57.20%	52.80%	9	0.20%	0.20%
New Jersey	33,325	79.40%	70.40%	3,680	12.30%	12.50%
New York	54,795	68.20%	59.30%	8,800	22.50%	17.20%
Ohio	52,746	58.60%	52.30%	14,872	33.10%	27.90%
Oregon	959	5.30%	3.50%	0	0%	0%
Pennsylvania	75,232	81.80%	80.00%	12,265	23.30%	22.40%
Rhode Island	2,204	48.00%	47.90%	32	1.00%	1.00%
Texas	142,442	100.00%	64.30%	78,810	100.00%	55.10%
TOTAL	**550,778**	**68.20%**	**52.80%**	**133,885**	**31.30%**	**22.10%**

Table 2 below compares average electric prices per kWh, including delivery, paid by all sectors in Illinois with the average price in the United States 1990-2011. The 1997 electric restructuring legislation in Illinois phased-in retail electric choice, starting with portions of C&I load in October 1999. In the period 1990-2000, average Illinois prices were consistently higher than the national average. In the period 2001-2011 Illinois prices have been consistently lower than the national average.

TABLE 2 (Data and Chart)

Total Electric Industry - All Sectors			
	Average Rate (cents/kWh)		
Year	**Illinois**	**US**	**Ratio**
1990	7.49	6.57	1.14
1991	7.63	6.75	1.13
1992	7.69	6.82	1.13
1993	7.75	6.93	1.12
1994	7.41	6.91	1.07
1995	7.69	6.89	1.12
1996	7.69	6.86	1.12
1997	7.71	6.85	1.13
1998	7.46	6.74	1.11
1999	6.96	6.66	1.05
2000	6.94	6.78	1.02
2001	6.90	7.25	0.95
2002	6.94	7.13	0.97
2003	6.86	7.38	0.93
2004	6.80	7.55	0.90
2005	6.95	8.05	0.86
2006	7.07	8.77	0.81
2007	8.46	8.98	0.94
2008	9.26	9.54	0.97
2009	9.33	9.89	0.94
2010	9.13	9.83	0.93
2011	9.01	9.99	0.90



[1] For purposes of this report, 18 jurisdictions, 17 states and the District of Columbia, are considered to have active electricity competitive choice programs, although some of the jurisdictions have a variety of limitations and restrictions that place significant constraints on the exercise of customer choice. Jurisdictions with broadly open choice programs are Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and Texas. Four others – California, Michigan, Montana and Oregon –, have notable competitive demand and customer receptivity to choice despite rather daunting regulatory and legislative obstacles to the exercise of choice. Nevada and Virginia, which once had the beginnings of customer choice programs, are not included.

[2] *Customer Choice in Electricity Markets: From Novel to Normal*, by Philip R. O'Connor, Ph.D., November 15, 2010, a research paper commissioned and published by The COMPETE Coalition. The paper can be found at the COMPETE website http://www.competecoalition.com/files/Customer-Choice-In-Electricity-Markets_0.pdf.

[3] DNV KEMA (KEMA at http://www.kema.com/Default.aspx) is a Netherlands-based global energy consultancy and information firm. The KEMA data base on competitive choice in electricity is indispensable for serious research on trends in the competitive electricity market. KEMA's quarterly reports provide detailed state-by-state and utility-by-utility data on eligible demand, competitively served customer accounts and volume and rates of switching to competitive supply. Importantly, these reports contain retrospective data and projections of likely future developments. The United States Energy Information Agency (EIA at http://www.eia.gov/) is the arm of the U.S. Department of Energy charged with collecting, disseminating and analyzing data across the energy spectrum. EIA has ably adapted its information-gathering methods to the realities of the restructuring electricity industry over the past two decades. Distributed Energy Financial Group LLC (DEFG at http://www.defgllc.com/) issues the "Annual Baseline Assessment of Choice in Canada and the United States" (ABACCUS). ABACCUS provides in-depth reviews of the legal background of choice in all relevant North American jurisdictions. While reporting on competitive volumes and switching rates at a high level, ABACCUS also focuses on pricing trends, numbers of competitive suppliers and rates jurisdictions on the degree of choice available.

[4] While California, Michigan, Montana and Oregon all currently have notable levels of demand exercising customer choice, each state has public policies in place that place varying significant limits on the ability of customers to engage with competitive suppliers. California grandfathered choice customers in in the wake of the state's "energy crisis" induced by its uniquely flawed market design, but prohibited new competitive customers until the state government had retired the high-priced contracts it entered into in a panic reaction at the time. Michigan, in the midst of growing interest and participation in choice by non-residential customers, succumbed in 2008 to protectionist pleas from incumbent utilities. Competition is capped at 10% of total demand in the territories of the two major investor-owned utilities and onerous conditions were placed on customers considering choice. Over 7,000 non-residential customers have signed on to waiting lists in the hope and anticipation of the caps being raised. In Oregon and Montana, while significant C&I demand is being served, new customers are effectively restricted from exercising choice.

[5] Electricity choice in California has never recovered from the period in 2000-2001 that is often called the "California Energy Crisis." In the legislative reaction that followed, existing choice customers were grandfathered and all others were locked into utility supply as long as high-priced contracts the state entered into during the price panic were still in place. Legislation in 2009 opened the door to modest, phased expansion of customers eligible for choice. The two first-come, first-served enrollment periods allowed so far, in April 2010 and 2011, resulted in immediate customer oversubscription and inevitable disappointment for customers who missed out on the extremely narrow opportunity afforded. The 2009 legislation had the unfortunate provision of making any further expansion of choice a function of further legislative determinations rather than of a Public Utilities Commission decision in response to market developments. A key difficulty in California is that while other states with choice programs have liquidated stranded costs, California has succeeded in building up a large stranded cost overhang that has been used to justify exit charges and other hindrances to the full realization of savings available from the competitive wholesale electricity market.

[6] Energy Choice Matters, January 13, 2012, Market Reports California phase IV Direct Access Cap Hit.

[7] In Arizona, no competitive power volumes ever flowed to customers following the 1998 enactment of a restructuring law due to a variety of regulatory infirmities in the choice program and litigation that invalidated the generation divestiture mandates in the law (see ABACCUS November 2011, p 31). In January 2012, a settlement involving Arizona Public Service (APS) will allow for large customers, capped at an aggregate total of 200 megawatts, to access competitive suppliers through APS. The arrangement under the settlement is termed a four year "experimental" tariff.

[8] Nevada and Virginia enacted legislation in the late 1990s aimed at moving to competitive retail choice but abandoned their efforts within just a few years. In Nevada, a handful of large customers, including casinos, were authorized by regulators to purchase competitive supply. However, competitive sourcing was mainly confined to a few large mining sites that continue to have market access. Virginia allowed for small volumes of competitive supply to flow for a number of years, but has now effectively shut down choice.

[9] *The Wall Street Journal* reported that on March 7, 2012 prices for natural gas deliveries in April 2012 fell to their lowest level since February 2002, "Natural Gas Touches Decade Low, *The Wall Street Journal*, March 8, 2012.

[10] EIA *Electric Power Monthly February 2012*, Table 5.4.B http://www.eia.gov/electricity/monthly/pdf/epm.pdf

[11] The seeming incongruity between the figure of 22% of eligible residential accounts being served competitively while 31% of residential demand is on choice contracts is largely accounted for by the greater average electric usage by residential customers in Texas, where 100% of eligible customers are served competitively, compared to many other competitive states. EIA state level electrical use data can be found at http://www.eia.gov/cneaf/electricity/esr/table5.html.

[12] EIA's Natural Gas Monthly, issued at the end of December 2011, shows that gas prices paid by electricity generators are at their lowest levels since 2002 and in many months of 2011 were about half the price levels in the same months in 2008 http://www.eia.gov/dnav/ng/hist/n3045us3m.htm. EIA's early release presentation of its schedule 2012 Annual Energy Outlook forecasts persistent long-term low natural gas prices and gas reserves that are about 40% greater than EIA estimates in 2008. The increase in reserve estimates is attributable in great part to shale gas development http://www.eia.gov/pressroom/presentations/howard_01232012.pdf.

[13] The November 2011 ABACCUS report issued by DEFG succinctly summarizes the situation its first page: "Policymakers throughout North America must understand that deliberate policy choices were made in successful jurisdictions to foster retail electricity competition. As a result, these places are experiencing lower prices that timely adjust to the lower fuel (power plant input costs) and electric commodity prices, and they are witnessing the offering of new products and services that consumers are embracing, "*Annual Baseline Assessment of Choice in Canada and the United States*", Distributed Energy Financial Group LLC, November 2011, p1. http://www.defgllc.com/content/login.asp?pid=275

[14] Michigan's limiting of retail competition to 10% of electricity demand is flexible only to the extent that customers will not be forcibly removed from choice if the volume cap falls below existing participation levels. This results in about 11% of current total demand being served under choice contracts. A reduction in the cap, however, does mean that, absent general growth in electricity, customers on the waiting list can only access choice once enough customers voluntarily exit choice so as to reduce participation levels below the 10% cap. The 9.25 million megawatt-hours reported by the two Michigan utilities as being served competitively is a higher figure than reported by KEMA at 8 million MWh.

[15] Consumers Power and DTE Energy maintain webpages about the cap calculations and the number of customers and demand awaiting choice. http://www.consumersenergy.com/content.aspx?id=2186&sid=107 and http://www.suppliers.detroitedison.com/internet/cap_tracking_system.jsp

[16] The November 2011 ABACCUS report (pp. 19-21) provides an excellent review of the innovation emerging in the competitive electricity market place in both the residential and non-residential sectors. Innovation is the result of the opportunity, unavailable under monopoly–price regulation, for competitors to address the key reality identified in ABACCUS that "different people value things differently."

[17] In addition to providing a list of competitive suppliers with links and information about how customers can switch, the CTEnergyInfo website offers rate comparison pages for residential and small business customers http://www.ctenergyinfo.com/choose_entry.htm.

[18] Residential choice in Dayton Power & Light is comparatively small and near-zero in the two AEP utility areas.

[19] ABACCUS November 2011, p45.

[20] Illinois Commerce Commission http://www.pluginillinois.org/Suppliers.aspx.

[21] Illinois Commerce Commission http://www.icc.illinois.gov/ORMD/MunicipalAggregation.aspx.

[22] ABACCUS November 2011, p64. NewEnergy Ventures was the retail supplier serving an industrial customer.

[23] ABACCUS November 2011, p19-21.

[24] ABACCUS November 2011, p104.

[25] "Japan's utilities warned of shake-up: electricity users to get more choice as power shortages loom." *Financial Times*, January 20, 2012.

Note on Author

Philip R. O'Connor is President of PROactive Strategies Inc. and a former utility regulator, having served as Chairman of the Illinois Commerce Commission (1983-85). He was an early advocate of competitive market solutions in telecommunications, natural gas, electricity and power plant emission reductions. O'Connor has been appointed by five consecutive Illinois Governors to numerous positions in Illinois State Government including Director of Insurance and member of the State Board of Elections. He earned his doctorate in political science from Northwestern University and in 2007-8 served in the U.S. Embassy in Baghdad, Iraq as an advisor to the Iraqi Ministry of Electricity.