

# Energy Supplier Marketing in Illinois

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The opinions contained herein represent those of the author and not of the Illinois Attorney General's Office

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- Natural Gas and Electric Competition Did Not Develop simultaneously:
  - Natural Gas competition was driven by utilities' plan to sell gas through unregulated utility affiliates
  - Electric power competition developed independent of utility, delayed by frozen utility rates

## **Two Different Paths to Retail Energy Marketing**

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- Utilities marketed to industrial customers first, then expanded into retail market through unregulated affiliates
- Utilities petitioned for competitive marketplace as a tariff change to open market to “Alternative Retail Gas Suppliers” – “ARGS” – in 2000; ICC approval in 2001, 2002
- Authorizing legislation was being deliberated while ICC tariff review took place and approved in 2002

**Gas Utilities turned to  
regulators for authority to  
increase affiliate revenue**

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- CUB request for investigation of Nicor “choice” tariffs asked that public interest and competitive benefits analysis be performed. No applicable law was yet in place.
- Regulators put utilities in charge of “choice” programs when tariffs were approved.
- Standards for supplier marketing, gas storage and all aspects of choice program were written by utilities and included in tariffs

## **Warning Signs in Retail Competitive Gas Market**

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- Managerial, technical and financial qualifications not designed to prevent fraud or misrepresentation
- Regulatory Commission has certification rules, but no marketing or disclosure rules
- Adequate disclosure of terms and conditions to customers was required

## **First ARGS Law Has Minimum Certification, Marketing Standards**

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- Using the utility's name and logo moves large number of utility customers from regulated utility to utility affiliate for gas purchases
  - Nicor Energy acquires 91% of retail residential market in Nicor territory
  - Ability of unregulated gas utility affiliates to use gas utility name and logo persists in Illinois

## **Affiliates' Use of Utility Name and Logo Permitted In Retail Gas Market**

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- Refusal of ICC to deny retail certification in 2004 to Santanna sets very low standard for ARGS
- CUB Gas Market Monitor comparing ARGS prices demonstrates that 90+% of ARGS plans do not save consumers money.
- Number of consumer complaints filed with Attorney General and other consumer advocates begins to climb

**Consumer complaints do not prompt increased scrutiny by regulators**

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- Door-to-door sales are greatest problem, enabling misrepresentation of affiliation by sales agents; many are paid solely on commission.
- Most sales agents paid solely on commission
- Customers regularly promised savings on gas bills
- Fixed price plans promoted as way to avoid future utility rate increases
- Less than full disclosure on prices

**Existing regulations  
ignored by problem  
suppliers**

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- 2005: AG files lawsuit against Santanna; settled 2006
- 2006: CUB files complaint against U.S. Energy Co.; settled 2006
- 2008: AG files lawsuit against U.S. Energy Co.; settled 2010
- 2008: CUB files second complaint against U.S. Energy Co.; Final Order by ICC 2010

## **AG, CUB AARP take action against worst gas marketers**

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- Attorney General advocates legislative solution to regulate ARGS problems
  - Amendments to Public Utilities Act, Consumer Fraud Act
  - All stakeholders at the table: AG, CUB, ICC Staff, ARGS
  - Law dictates heavy marketing and disclosure limitations

**Continuing wave of  
complaints prompts  
legislative action**

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- Most important provision: \$50 termination fee
- More detailed certification, marketing and disclosure requirements provide guidance for regulators
- ICC authority to impose penalties or revoke certification strengthened
- Uniform disclosure standards and more consumer education requirements added

# **ARGS Law Amended to Regulate Marketing, Disclosure and Certification**

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- Commonwealth Edison and Ameren bundled rates frozen for 10 years and Alternative Retail Electric Suppliers (ARES) could not beat the utility rate
- Reverse auction raised power rates – but auction was eliminated through settlement and creation of Illinois Power Agency to purchase power on behalf of residential customers

# **Alternative Electric Suppliers See Retail Opportunity as Utility Power Rates Rise**

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- In 2007, ARES convince General Assembly to require regulated utility companies to purchase their receivables
- “Purchase of Receivables” law and single billing option provisions turn the utility into a collection agent for the alternative supplier
- No “Purchase of Receivables” law in effect for alternative gas suppliers

**Alternative suppliers turn  
to legislature to  
eliminate risks of  
competition**

- ARES rulemaking based largely on ARGS statute
- New rules are not yet final; implementation expected early 2012
- Proposed rule includes \$50 termination fee
- Rule includes door-to-door and on-line rules; prohibits marketing of legally required “green” products; ARES must inform ICC if it has declared *force majeure* within previous 10 years; ARES cannot use name and logo of existing electric utility

## **Lesson Learned?: Regulators approve retail electric marketing and disclosures rules**

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