RESTRUCTURED ELECTRICITY MARKETS:
A TRAIN WRECK WAITING TO HAPPEN?

PREFACE

The Electricity Consumers Resource Council (ELCON) continues to believe that “true” or “real” competition in wholesale and retail electricity markets can bring significant benefits to all consumers and to the U.S. economy. ELCON members own and operate manufacturing facilities throughout the nation, and they find that the so-called “organized markets” are not structured to promote competition, but rather to implement a re-regulated hybrid wholesale market that is decidedly anti-consumer.

The ineffectiveness and anti-consumer bias of these markets have been gaining more and more attention. Think tanks and nationally known scholars have published papers. Local and national newspapers have carried dozens of articles. Electricity stakeholders have prepared analyses of how the markets have failed. And, most importantly, large and small consumers in a number of states (Connecticut, Delaware, Illinois, Maine, Maryland, New Jersey, Ohio, Pennsylvania, Rhode Island, Texas, and Virginia, to name a few) have voiced their concern about unprecedented rate increases and their opposition to how the organized markets operate.

And, while consumers are voicing this opposition, many utilities (or utility holding companies) that operate in these same markets are posting record profits.

The attached paper provides details on the size and scope of this backlash against the organized markets.

ELCON believes that these markets cannot continue to operate in this way. We continue to favor “fixing” these markets so the benefits of competition can be achieved. But if policy makers at every level are unwilling to undertake such an effort, ELCON and ELCON members propose exploring other options, including a return to cost-of-service regulation.

Details:

Stakeholders and Media

- Industrials have strongly opposed many aspects of the Organized Markets for a considerable amount of time:
    - **The PJM ICC** – with its "White Paper: What Large Commercial & Industrial Customers Need from the PJM Marketplace" released in December 2004
    - **ELCON** – with its "Problems in the Organized Markets" released in April 2005 (available at: http://www.elcon.org/Documents/Publications/ELCONSpecialReportApril2005.pdf)
- Others national entities have joined the opposition:
    - **The CATO Institute** – with its "Rethinking Electricity Restructuring" released in November 2004 (http://www.cato.org/pub_display.php?pub_id=2609)
    - **APPA**
        - **First:** with its "Restructuring at the Crossroads" released in December 2004 (http://www.appanet.org/files/PDFs/APPAWhitePaperRestructuringatCrossroads1204.pdf)
        - **Second:** The letter to the Editor in the ***Washington Post*** on April 7, 2006 stating that: "Deregulation has yet to produce the promised results of lower rates and better service…" The letter notes that the increased prices are not due to increases in the price of fuels alone, but also to the design of the "market."
        - **Third:** APPA has commissioned a series of studies through its Electric Market Reform Initiative investigating various aspects of restructuring. A recently released study by John Kwoka, an economics professor at Northeastern University concludes despite much advocacy, there is no reliable and convincing evidence that consumers are better off as a result of restructuring of the US electric power industry.
    - Thomas Lenard of the **Progress & Freedom Foundation** published "Electricity 'Restructuring': What Went Wrong" in November 2004 and it was reprinted in the July 2005 edition of ***The Electricity Journal*** (http://www.pff.org/issues-pubs/pops/pop11.23electricityrestructuring.pdf)
    - **Nobel Laureate economist Vernon Smith's** *Wall Street Journal* op-ed piece on August 12, 2005 Carnegie Mellon Professors Lave, Blumsack and Apt authored an article titled: "Lessons from the Failure of U.S. Electricity Restructuring," ***Electricity Journal***, March 2006

(http://www.opinionjournal.com/forms/printThis.html?=110007096)

- Nine members of the US House of Representatives called for a hearing on the rising costs of RTOs (***EPD***, Feb. 22, 2006, page 3)
- The Alliance of State Leaders Protecting Electricity Consumers (Marilyn Showalter, co-chair) submitted comments to the Electric Energy Market Competition Task Force noting that "the elimination of rate caps has produced 'sticker shock' among consumers in a number of states (Connecticut, Delaware, Maryland, Montana, and Texas), provoking consumer outrage, political discontent, and demands for electricity re-regulation. Specific data was included for those states and Montana, Ohio, Virginia and Illinois (no date, submitted roughly June 26, 2006, as part of FERC Docket No. AD05-17-000).
- The Organization of PJM States (OPSI), comprised of the utility commissions in each state within PJM, filed at FERC seeking a much more independent market monitoring unit, including the ability to file independently before FERC and state PSCs without PJM approval. PJM countered that OPSI should file a Section 206 proceeding and prove that the present structure is unjust and unreasonable (***RT***, July 11, 2006)

- The ***New York Times*** published a series of articles by David Cay Johnston on restructuring:
  - October 15, 2006 page 1, above the fold: The article sharply criticizes electricity restructuring. A quote from the article perhaps summarizing: "A decade after competition was introduced in their industries, long-distance phone rates had fallen by half, air fares by more than a fourth and trucking rates by a fourth. But a decade after the federal government opened the business of generating electricity to competition, the market has produced no such decline." The ***Times*** says that this is the first of a series of articles. ("A Newspaper Peeks at Power Industry and Restructuring", ***The New York Times***, October 15, 2006, page 1)
  - October 23, 2006: The article states: "Supporters of deregulation said customers would benefit from healthy competition among a growing number of electricity producers. But such competition has not developed." The article quotes Robert McCullough, a utility economist and consultant saying that in Baltimore "…the same energy is generated by the same plants, owned by the same owners, and sold to the same customers, simply at a vastly higher price." And the article quotes Janine Migden-Ostrander, Ohio's

consumer advocate, saying: "… the utilities killed the market before it could be started." ("In Deregulation, Power Plants Turn Into Blue Chips," ***The New York Times***, October 23, 2006)

- November 21, 2006: The article begins: "A growing chorus of large industrial power users, municipal utilities and consumer groups say there is a reason the price of electricity has not fallen since the federal government opened the heavily regulated utility industry to competition a decade ago. The new markets, they argue, do not work right." The article refers to the single price auction, suppliers withholding power and collusion as specific causes for concern. It quotes an industrial filing at FERC as saying: "The 'markets' that are rolling off the commission's [FERC's] production line are not fit for their public purpose." It quotes Frank Wolak, a Stanford University economist and Chairman of the CA ISO's Market Surveillance Committee, as saying: "… even small flaws in the design of markets can cause enormous harm to consumers in very little time." ("Flaws Seen in Markets for Utilities," ***The New York Times***, November 21, 2006)
- December 13, 2006: The article states that the congested transmission network has frustrated the many who supported the opening of the electricity industry to competition a decade ago, hoping that prices would fall. But for electric prices to fall, the network must be able to move power from the lowest-cost plants to where it is needed. However, fully competitive markets and the tremendous added value that could be provided to customers have been stalled by a transmission network that is too small and was not designed for competitive markets. ("Grid Limitations Increase Prices For Electricity," ***The New York Times***, December 13, 2006.

- Major newspapers in the states where consumers are rebelling make electricity restructuring front-page news – often for days upon days.

In the States

- Residential consumers are becoming much more vocal as electricity prices rise and residential price caps expire. State examples include:
  - **Connecticut**:
    - The Department of Public Utility Control (DPUC) states that CL&P rates have increased by 72% and

retail competition has failed to lower rates (***EPD***, Feb. 14, 2006, page 1)

- Connecticut AG Richard Blumenthal proposed legislation establishing a state power authority able to build generation and impose a windfall profits tax (***EPD***, Feb. 23, 2006, page 1)
- The AG says that the state's nuclear plants have enjoyed profits of 44% and 53%. The owner, Dominion, doesn't know where Blumenthal got his numbers, noting profits are proprietary information (***RT***, Feb. 27,2006, Page 3)
- Rep. Vickie Nordello, D-Energy and Technology Committee, said: "Deregulation is a failed experiment and that relying on the market to lower prices does not work." (***Hartford WTNH Channel 9***, Feb. 28, 2006)
- The DPUC is designing a new market that looks like a partial return to regulation
- United Illuminating proposed a fuel adjustment clause that was opposed by the Conn. Industrial Energy Consumers, the Attorney General and the Office of Consumer Counsel
- Marketer Direct Energy (Centrica) wants utilities to "play by the same rules" as merchant generators if they build new generation and letting utilities back into generation would "not be the right direction to go" (RS, June 5, 2006)
- The Connecticut Industrial Energy Consumers (CIEC) pressed for the DPUC to create special price discounts to prevent business flight due to electric rates that are double the national average and expected to rise substantially in January 2007. The DPUC states that it doesn't have the legal authority to approve such rates. The CIEC disagrees. (***EPD***, October 12, 2006, page 4)
- Connecticut Governor Jodi Rell has pushed for disclosure of the supply bids from the solicitations by CL&P and United Illuminating. (***EPD***, October 19, 2006, page 1)
- Connecticut industrials pressed state regulators to create special price discounts to prevent business flight, as the state prepares to hike rates that are already among the nation's highest. Industrials in Connecticut pay 11.6 ¢/kWh compared with 9.36 ¢/kWh a year ago. The average rate nationwide for industrials is 5.94 ¢/kWh. (***EPD***, Oct. 12, 2006, page 4)

- Connecticut Attn. General Richard Blumenthal, the state's Office of Consumer Counsel and two groups representing municipal utilities and industrial power consumers asked FERC to conclude that wholesale power rates in the state are not just and reasonable. But FERC ruled that the existing market-based rates within ISO New England and the RMR contracts that supplement power supplies must be left in place and rejected the appeal to shift to cost-based rates. (***EPD***, Oct. 12, 2006, page 1)
- Attorney General Blumenthal requested rehearing on FERC's denial of his complaint about the markets in Connecticut. (***RT***, November 14, 2006 page 2)
- Legislative hearings are scheduled for December 2006 to consider new rates as high as 22.3 ¢/kWh for residential consumers. (***EPD***, November 28, 2006, page 1)
- Connecticut consumers face rate hikes as high as 79% in 2007 (***RT***, December 7, 2006, page 2)
- Connecticut regulators approved on December 8th a 7.7% rate increase for CL&P. The approval came despite a plea earlier in the week by Gov. Jodi Rell that the rate hike be delayed until the state General Assembly returns to session in January. The rate proposal also came under attach from Attorney General Richard Blumenthal who argues that utilities, not ratepayers, should absorb more of the cost. Conn.'s electric costs are the third-highest in the nation behind Massachusetts and Hawaii. (***EPD***, December 11, 2006, page 1)
- The Connecticut General Assembly's Energy & Technology Committee held hearings just before Christmas on the expected rate hikes. Attorney General Richard Blumenthal stated: "The conclusion is inescapable that electric deregulation has failed in Connecticut, and failed spectacularly." He noted that CT's electric rates are twice as high as four years ago, and are now the highest in the continental US. Blumenthal urged the General Assembly to impose a windfall profits tax on generators, requiring them to return half of all profits exceeding a 20% return on equity. He said that this would raise about $355 million in 2006 and $416 million in 2007. The AARP called for utility-owned generation and said that:

"electricity customers have not received any discernible benefits from restructuring." (***EPD***, December 26, 2006, page 1)

- The Attorneys general of Connecticut and Massachusetts filed with the US Court of Appeals for the District of Columbia to stop ISO New England's forward capacity market saying it unfairly enriches the owners of power plants by over $800 million over four years. CT AG Blumenthal said: "Our suit must stop FERC from inflaming our raging electricity price inferno…" (***Megawatt Daily***, January 5, 2007, page 1)
- Legislation was proposed by State Rep. Vicki Nardello, vice chairman of the legislature's Energy and Technology Committee to allow Connecticut's two utilities to get back into the power generation business, subject to state regulation (**Associated Press,** January 31, 2007)
- Preliminary to submitting her budget, Gov. Jodi Rell said she will call for a major transformation in state energy planning, including a new Department of Energy that will take over policy making authority not in the hands of the state Department of Public Utility Control (EPD, February 6, 2007, page 1)

- **Delaware**: The governor issued an order seeking to blunt rate hikes possibly exceeding 100% for some customers – 59% for residentials (***EPD***, Feb. 9, 2006, page 1)
  - She created a Cabinet Committee on Energy including the heads of six state departments plus the Office of Management and Budget and the Delaware Economic Development office. The Committee recommended requiring Delmarva Power to build rate based plants and a return to cost-of-service regulation
  - Political activist Richard Korn and the Rev. Christopher A. Bullock, who leads an influential Baptist church in Wilmington, sent federal antitrust lawyers a letter asking them to study whether any aspect of deregulation in Delaware violates U.S. antitrust laws. (***The News Journal***, March 10, 2006)
  - Occidental Chemical closed a major chlor-alkali facility in Delaware City on Nov. 10, 2005, citing high electricity costs as the primary factor (http://www.elcon.org/Documents/FERCFilings/ELCONSupplementalComments.pdf, page 43)

   - The Delaware Office of Management & Budget and the Office of the Controller General issues a solicitation on November 28, 2006 for a consultant "…to produce a study on the potential effects of re-regulation of the electric industry." Democratic Governor Ruth Ann Miner issues an executive order calling for a phase in of residential electricity price increases, for Delmarva Power to solicit in-state capacity and for state agencies to consider re-regulation. The Legislature called for similar measures. The consultant must report on recent developments in re-regulating electricity supply in other states and on "…any efforts to suspend or otherwise back away from deregulatory efforts." The firm must also outline the benefits and shortcomings of re-regulation, and estimate the economic costs to the state and the power industry of re-regulation. (***EPD***, November 30, 2006, page 1)
- **Illinoi**s: Residential consumers are very concerned over the expiration of rate caps and impending rate increases approaching 40%.
   - Residentials are now supporting a 3-year extension of rate caps (***EPD***, Feb. 16, 2006, page 1)
   - Legislation has been introduced (H.B. 5766) that extends the electric rate freeze for another 3 years and requires that at least 33% of all customer classes have access to alternate electric suppliers before the transition period ends. The bill's sponsor, Rep. Lisa Dugan, says that "There is no competition" for small commercial and residential customers in Illinois. Governor Rod Blagojevich, Attorney General Lisa Madigan, the Cook County state's attorney and the Citizens Utility Board all agree. Lisa Madigan is the daughter of powerful House Speaker Michael Madigan. (***EPD***, Feb. 27, 2006, Page 1) While that legislation probably will not be enacted, it is a real indication of opposition
   - A 30,000 MW reverse power auction is scheduled for September 5th for Commonwealth Edison and Ameren. Opponents argue that it will raise electric rates as much as 40% in January 2007 when the rate freeze expires. (***EPD***, Aug. 7, 2006, page 8)
   - Attorney General Madigan asked the Illinois Supreme Court to halt the auction. The Court refused to hear the case. Madigan must return to the Appellate Court. (***EPD***, Aug. 7, 2006, page 1)

- Madigan and other auction critics, including Governor Rod Blagojevich, the Cook County State's Attorney and Citizens Utility Board consumer watchdog, warn that customers will be the losers if they are forced to pay rates in 2007 that are at least 40% higher than existing charges. CUB Executive Director David Kolata predicts lawmakers will become re-energized about the issue when they reconvene in November. (**EPD**, Sept. 5, 2006, page 1)
- The ***Wall Street Journal*** reported on September 18, 2006 that electricity rate increases of 22% to 55% will be the result of the first energy auction conducted by state officials. (***WSJ***, Sept. 18, 2006, page A-6)
- The Citizens Utility Board, Attorney General Lisa Madigan and the Building Owners & Managers Association of Chicago filed briefs on September 18, 2006 in Illinois Appellate Court asking that the auction be rejected. (***RT***, Sept. 20, 2006, page 5) The CUB called the auctions a "disaster for consumers."
- H.B 5766 has been introduced that would continue the rate moratorium for three more years. This legislation will be debated in a special session of the legislature in November 2006. (**EPD**, Sept. 28, 2006, page 1)
- Illinois utilities said that the legislation would dry up cash and available credit and lead to bankruptcy.
- The Utility Oversight Committee approved H.B. 5766 on October 9th. Lawmakers said that they are not cowed by "bankruptcy blackmail" treats. The full House is expected to pass the legislation.
- Illinois Lieutenant Governor Pat Quinn has asked the ICC to investigate the financial compensation for "overpaid" executives of Exelon and their involvement in the Consumers Organized for Reliable Electricity (CORE) which is "carpet-bombing consumers with TV ads" opposing the proposed extension of the rate freeze. Quinn said that: "They're [Exelon} running these early Halloween commercials trying to scare the daylights out of consumers … if we don't give them every penny of their rate hike they'll go bankrupt." (***EPD***, October 19, 2006, page 1)
- Governor Rod Blagojevich, Lt. Governor Pat Quinn and Attn. General Lisa Madigan all support a freeze extension. However, CEO John Rowe said

Exelon would fight the rate freeze "like a trapped rat." This is while income at Exelon Generation jumped 17.6% to $394 million, though revenue dropped 2.8% to $2.6 billion. (***EPD***, Oct. 30, 2006)

- CommEd's CEO Frank Clark again warned Illinois lawmakers of "dire consequences" if the state's rate freeze is extended. (***RT***, November 15, 2006 pate 2)
- The legislature adjourned November 30th in a stalemate. The Senate, in a 40-16 vote passed a three-year phase in of rate increases. But the House voted 65-33 in favor of a three-year extension of an existing rate freeze. Thus, rate increases expected to average 22% for ComEd residential consumers and 40-55% for Ameren's three Illinois electric utilities unless: (1) the Second District Appellate Court acts on Attorney General Lisa Madigan's appeal of the auctions or (2) the ICC acts on separate rate phase-in proposals of the utilities. (***EPD***, December 1, 2006, page 1)
- AmerenCILCO, AmerenCIPS and AmerenIP on December 11th announced a plan to phase in rate increases. The September 5-8 auction would translate into rate increases of from 40% to 55%. The phase-in plan would limit increases to 14% for each of three years with interest on the deferred billings at 3.25%. (***EPD***, December 12, 2006, page 1)
- SB 1714 to extend the Illinois' rate freeze died in the waning hours of the 94th Legislature. (***RT***, January 11, 2007, Page 3)
- Legislation was introduced a rate freeze extension that Commonwealth Edison said could cost the company $4 million a day and put the company in bankruptcy (**EPD**, February 26, 2007)
- In response to massive consumer complaints, Ameren proposed to the Illinois Commerce Commission that it provide millions of dollars in one-time credits to residential consumers in March (**Chicago Tribune**, February 28, 2007, **Houston Chronicle**, February 28, 2007)
- Illinois legislators were pushing for a vote on HB 1750 which would roll back electricity rtes to pre-2007 levels and force ComEd and Ameren to refund higher levels in effect since January (**EPD**, Marc 1, 2007, page 3)

- The ICC voted 4-0 to open separate investigations into the rate designs of Commonwealth Edison and Ameren (**EPD**, March 5, 2007, page 1)
- Legislation (SB 1592) which would roll back electric rates to 2006 level and impose a one-year rate freeze on Ameren and Commonwealth Edison was approved by the Senate Committee 11-1 (**EPD**, March 26, 2007)
- Legislation (HB 4091) was introduced to create a nonprofit Illinois Power Authority to compete with utilities by selling electricity at no cost to consumers (**EPD**, March 29, 2007, p.1)

o **Kentucky:**

- The Kentucky Industrial Utility Customers association filed with FERC supporting the utilities' requests to withdraw from MISO (***RT***, Feb. 22, 06, page 3) FERC approved the request to leave MISO.

o **Maine:**

- Business groups press lawmakers to quit NEPOOL – including (***EPD***, Feb. 10, 06, page 1): Maine Aggregate Association; Maine Campground Owners Assn.; Maine Farm Bureau; Maine Forest Products Council; Maine Grocers Assn.; Maine Innkeepers Assn.; Maine Merchants Assn.; Maine Metal Products Assn.; Maine Pulp and Paper Assn.; Maine Oil Dealers Assn.; Maine Restaurant Assn.; Maine Tourism Assn.; Associated Builders & Contractors of Maine; and the Industrial Energy Consumer Group
- The Maine PUC, in reaction to FERC's approval of the forward capacity market for New England, opened a formal investigation to examine options for leaving ISO New England and joining the Canadian grid (***EPD,*** June 23, 2006)
- Central Maine Power asked the PUC to return to utility portfolio planning and utility ownership of generation, stating the existing restructuring market was "under significant stress, if not failure" (***EPD,*** July 12, 2006***, RT,*** July 12, 2006)
- The Maine Legislature enacted legislation directing the Maine PUC to consider long-term contracting, electric resource adequacy, the cost of electricity and standard offer supply. The PUC issued a NOI on June 7, 2006. Central Maine Power filed comments on July 10th stating that Maine has experimented with restructuring for over six years. The results have been higher

prices and significant price volatility for consumers and boom or bust cycles for generators. CMP said that there is little reason to think that there will be different results in the future without correcting major flaws. (CMP Comments in Docket No. 2006-314, July 10, 2006)

    - The PUC, along with the State Public Advocate and others (including the AGs of CT and MA) requested a rehearing of FERC's approval of the forward capacity market (***EPD***, July 19, 2006)
    - The Maine PUC staff issued a draft report suggesting making Maine an "electricity island" to save Maine consumers $325 million annually. (***RT***, November 14, 2006 page 3)
    - The Maine PUC issued a report to the Maine Legislature setting forth several alternatives to "islanding." The report said that the state should aggressively pursue alternatives to its current membership in ISO-NE because "significant inequities" are costing the state too much money. The report said that there are no insurmountable legal, economic or technical obstacles to prevent withdrawal from the ISO. (***EPD***, January 18, 2007, Page 1)
    - Maine and New Brunswick, Canada, signed a Memorandum of Understanding that lays out a timeline to explore and set forth actions enhancing cross-border cooperation on electrical interconnections (unsourced, February 9, 2007)
- **Maryland:** May be the "poster child" of consumer rebellion.
    - Residential rates were expected to increase: 39% at Pepco; 35% at Delmarva P&L; and 72% at BG&E in June 2006
    - In December 2005 Alcoa shut down an aluminum smelter in Frederick laying off 600 workers because of increases in its power prices.
    - The Governor has demanded actions to reduce the rate increases. Gov. Robert Ehrlich, Jr., said: "…72 percent will not stand. Nowhere near 72 percent will stand…" (***Baltimore Sun***, March 20, 2006)
    - There were numerous calls for the Chairman of the PSC to resign (example: ***ABC 7 News***, March 20, 2006) and the Maryland Democratic Party ran ads on Baltimore area radio stations blaming "Bob Ehrlich's Public Service Commission" for approving a 72 percent increase in BGE's electricity rates scheduled to take effect when

rate caps expire June 30th. (***ABC 7 News***, March 16, 2006)

- Statements like the following were regularly in the daily news: "[Governor] Bob Ehrlich has turned a watchdog agency whose sole purpose was the protection of Maryland families into a lapdog for special industry veterans." (***Baltimore Sun***, March 14, 2006)
- Del. Pat McDonough said: "You have a better chance of finding Jimmy Hoffa than you do finding (energy) competition in Maryland." (***Owings Mills Times***, March 17, 2006)
- Lawmakers tried to use the proposed merger of FPL Group and Constellation as a bargaining chip – *ABC News* reported that BGE agreed to refund $500 million to consumers they collected in stranded costs to allow the merger to go through (***ABC 7 News***, March 22, 2006)
- The ***Washington Post*** ran a front page article on the controversy and articles were in the ***Baltimore Sun*** nearly on a daily basis
- Many called for a return to cost-of-service regulation
- The General Assembly voted with a veto-proof margin on March 31st to fire the 5 members of the state Public Service Commission and replace 4 of them with regulators selected by lawmakers. (***Baltimore Sun***, April 1, 2006)
- The General Assembly also on March 31st voted with a veto-proof margin to require Constellation Energy Group, the parent of BG&E, to return to its customers the $528 million it received in stranded cost payments before Constellation can complete its proposed merger with FP&L. (***Baltimore Sun***, April 1, 2006)
- The Governor vetoed all of the bills. While the legislature adjourned without over-riding the Governor's vetoes, the issue is far from over. Montgomery County Executive Douglas M. Duncan, one of three candidates for governor, speaking outside the Baltimore headquarters of Constellation Energy, said: "Bob Ehrlich doesn't want to talk about re-regulating the energy industry… Martin O'Malley [Duncan's Democratic primary opponent] doesn't want to take on the big energy companies. They're not willing to do anything to offend their big donors." (***Baltimore Sun***, April 18, 2006) Duncan is calling for re-regulation and caps on rates.

- O'Malley has been active largely through criticism of the PSC. O'Malley supporters delivered to Ehrlich a petition with 4,500 signatures calling on PSC Chairman Kenneth D. Schisler to resign and urged Ehrlich to use Constellation's proposed merger as leverage in negotiations. (***Baltimore Sun***, April 18, 2006)
- The state PSC "resuscitates" the March 6 order limiting BGE's initial rate increase to 21% and allows the utility to recover any under-collected revenue plus interest over a two-year period (***EPD***, June 5, 2006)
- In a special session, both houses of the Maryland legislature approved a bill (by "veto-proof" margins) to hold BGE's rate increase to 15% and fire the PSC (***Baltimore Sun***, June 15, 2006); Governor Ehrlich opposed the bill, and called for a public hearing (***Washington Post***, June 16, 2006), then vetoed the bill. The legislature overturned the veto on June 16, 2006 (***EPD***, June 26, 2006).
- The members of the PSC filed a lawsuit challenging the provisions of the bill that fire the commissioners. (***Associated Press***, June 26, 2006, **EPD**, June 27, 2006). Subsequently, the chief judge of the Court of Appeals blocked the provision firing the Commissioners which will stay in place until the court takes further action (***Washington Post***, July 8, 2006)
- The PSC dismissed Constellation Energy's application to merge with FPL Group in response to the recently enacted electricity statute which established specific conditions that the PSC must follow in reviewing the proposed merger. In it order, the PSC said the Constellation could "refile a comprehensive application which addresses all the standards and conditions enacted" by the new law (***EPD,*** July 11, 2005)
- Court of Appeals ruled 6-1 that the General Assembly did not have the authority to pass legislation that fired members of the State Public Service Commission (**Associated Press**, Sept. 14, 2006)
- FPL Group sued Maryland and the Maryland PUC in an effort to force a review of the proposed merger between FPL and Constellation (**EPD**, October 6,2006, page 1)
- Constellation Energy Group Inc. and Florida's FPL Group Inc. officially gave up on their merger

plans yesterday after executives concluded the deal was hopelessly mired in a populist political debate in Maryland over deregulation and rising electricity rates. (***Baltimore Sun***, October 26, 2006)

- Martin O'Malley defeated Gov. Bob Ehrlich on November 7th. Gov.-elect O'Malley pledged to fire the PSC. He said: "I would like to press, consistent with what we said during the campaign, that we have a new Public Service Commission… There were few agencies that failed quite so badly as the Public Service Commission." (***Baltimore Sun***, November 10, 2006)
- In January 2007, legislative leaders are still trying to oust PSC members, but they want an amicable parting. Senate President Thomas (Mike) Miller and Del. Dereck Davis both would like to see PSC Chairman Kenneth Schisler leave and they say that the new Governor could still seek to directly oust him.
- Sen. E. J. Pipkin, an Eastern Shore Republican, said that he plans to introduce legislation that would establish an electricity board and leave the PSC to continue to regulate telephone, water and sewage companies, and taxis. "The problem is that, on net, we have commissioners who are believers in this failed deregulated market," Pipkin said. E-mails released last year showed that Schisler had a close relationship with utility lobbyists and company executives, taking hunting trips and sharing strategies on how to sway lawmakers. (***Baltimore Sun***, January 21, 2007)
- Facing intense pressure from new Governor Martin O'Malley, PSC Chairman Kenneth Schisler resigned effective February 2, 2007. Another Commissioner resigned shortly after the election and the term of another expires during the summer of 2007. thus, O'Malley will be able to appoint a majority of the Commissioners by summer. (***EPD***, January 30, 2007, page 1)
- Legislation (S.B. 400) has been filed directing the Public Service Commission to begin a new inquiry reviewing electricity restructuring when a new PSC chairman is appointed by Gov. O'Malley. Utilities stated they did not object (**EPD**, February 14, 2007, page 1)

o **Massachusetts:** Governor Deval Patrick has filed legislation to abolish the state Department of Telecommunications and Energy to create a Commonwealth Utilities Commission which would regulate only energy with telecommunications issued moved to another department. (**EPD**, February 13, 2007, page 1)

- **Michigan:**
  - Consumers Energy proposed to sell the Palisades Nuclear plant to Entergy. Michigan Attorney General Mike Cox said that he will make every effort to persuade the PSC to reject the sale. Cox said that the sale would result in at least $62 million more for electricity for the next nine years. “Moreover, there are no guarantees of energy availability or price stability after the proposed contract ends in 15 Years, Cox said. Further, he argued that because Entergy would be a merchant seller, the state would lose its ability to regulate costs and operations at Palisades. (***EPD***, January 23, 2007, Page 1)
  - Michigan Public Service Commission Chairman Peter Lark proposed that state utilities be required to rely more heavily on renewable resources as well as including a nonbypassable charge for retail choice customers to pay for utility power supplies and a new energy efficiency program. Most actions re=quire legislative approval.(**EPD**, February 8, 2007, page 1)
  - David Meador, DTE CFO, predicted that the state legislature will return to a “full regulated environment” for electricity (**EPD**, February 28, 2007, page 5)
  - The Michigan PSC granted settlements to seven utilities so that higher fuel prices can be captured through higher rates (**RT**, March 23, 2007)
  - The State Legislature is considering a proposal to eliminate power competition in exchange for new taxes on power companies to balance the state budget (**RT**, March 30, 2007); in addition House Speaker Andy Dillon introduced legislation (PA 141)to impose a $1 billion annual tax on utilities and rescind the state’s 2000 electric choice law – and interestingly, the two major utilities (Consumers and DTE) are said to be “receptive” to the plan (**EPD**, March 30, 2007, p. 1)
- **Montana:**
  - Bills were introduced into the Legislature that would terminate Montana’s failed utility industry restructuring, allow NorthWestern to own generation again, and create a state transmission authority. The 1997 deregulation legislation

resulted in Montana Power's sale in 1998 of its vast and cheap hydroelectric generation to PPL Montana and sale in 2002 of the utility's electric and natural gas distribution utilities to NorthWestern. The utility's power prices have doubled since 1998. (***EPD***, January 4, 2007, p.1)

- A controversial amendment was offered to the bill repealing Montana's restructuring bill (HB 25) that would benefit Green Energy Buying Cooperative which wants to build two wind farms, though it has no retail customers putting enactment into doubt (**EPD**, April 5, 2007, p. 1). However, that amendment was removed and the bill was approved by the Senate, though it still has to go back to the House (other amendments were added) – large industrial customers with over 300 MW of lpod have already left NorthWestern's service and the bill does not require them to return (EPD, April 9, 2007, p. 1)

- **New England:**
  - Every governor, consumer advocate, regulator and Member of the Congressional Delegation stringently opposed the ISO-NE proposal for LICAP
  - However, FERC approved LICAP (but postponed implementation for a year) unless a settlement could be reached
  - A settlement was reached with a large number of parties. However, Maine and Massachusetts did not fully agree with the settlement. These two states constitute over 50% of the load in New England.
  - FERC must issue a final order by the fall of 2006
  - The Maine PUC, along with the State Public Advocate and others (including the AGs of CT and MA) requested a rehearing of FERC's approval of the New England forward capacity market (***EPD***, July 19, 2006)
- **New Jersey:** Utilities completed their annual online auction for basic generation service which will raise rates by 12% - 13.7% (***EPD***, Feb. 10, 06, page 5).
  - Specifically, PSE&G will go up 13.7%; Jersey Central P&L 12.4% and Orange & Rockland 12% (***NorthJersey.com***, March 10, 2006)
  - In February, the BPU deferred its decision on implementation of a $64 million rate credit due PSE&G (***NorthJersey.com***, March 10, 2006)
  - Forty-three of the 80 members of the State Assembly signed a non-binding resolution asking

the Board of Public Utilities to reject the merger of Exelon and PSE&G (***EPD***, June 27, 2006).
    - Exelon and PSEG issues an “ultimatum” to the NJ BPU that is assure them that the staff would accept in principle their “last and best offer.” The BPU ignored the ultimatum. The public advocate then sought significant changes to the last and best offer including refund of stranded cost recovery. (***EPD***, Aug. 11, 06, p. 1)
- **Ohio:**
    - Two competitive retail suppliers, Constellation NewEnergy and WPS Energy services, complained to the PUC that Duke Energy Ohio’s effort to double the amount security suppliers must post is discriminatory and will threaten competition (***EPD,*** July 25, 2006)
- **Pennsylvania:**
    - Pike County (Pike Power and Light) rates went up 73%. County officials have “gotten an earful” from angry customers and are now pushing the state Public Utilities Commission to investigate the rate hikes. Pike County Commission Chairman Harry Forbes said: “There is no competition, and that’s what it was supposed to be all about.” (***Times Herald-Record***, February 22, 2006)
    - Allegheny Technologies announced in October 2006 that it would cancel its planned capital investments in Pennsylvania. Douglas A. Kittenbrink, Executive Vice President, said: “We have facilities in 19 states around the country, and Pennsylvania has the highest power rates in the country.” At the same conference, John H. Goodish, Chief Operating Officer, U.S. Steel Corp., said in the seven states in which it operates mills and mines, nowhere else is power more expensive than in this region. (***Pittsburgh Tribune-Review***, Saturday, October 21, 2006)
- **PJM:**
    - Critics of PJM, including industrial customers, proposed to sharply revise the capacity market plan that FERC approved earlier, and specifically asking that the first capacity auction planned for April be postponed (EPD, January 24, 2007, page 1)
- **Rhode Island:** Legislators prepared legislation designed to stabilize electricity prices and strengthen state energy planning, as well as extend utility standard offers by 10 years to 2019. Passage was expected soon (***EPD***, June 26, 2006).

- **Texas:** ERCOT often has been held up as the most competitive restructured electricity market in the country. However even there, consumer backlash is growing as residential prices are rising rapidly (NUS Consulting reports 46.6% between April 2005 and 2006). State Representative Phil King (R-Weatherford) recently said his colleagues are batting around ideas to cap extreme price increases or extend regulation during the next legislative session because voters are complaining prices are too high. (Speech of Representative King at the Gulf Coast Power Association, October 6, 2006 as reported in the McClatchy-Tribune Business News [Formerly Knight Ridder/Tribune Business News], October 6, 2006.
- **Virginia:**
  - Legislation has been introduced in Virginia over concern regarding the expiration of capped rates (***EPD***, Feb. 15, 06, page 1)
  - Dominion Virginia Power announced on December 21st that it had proposed to state legislators that they scrap the current plan of allowing unfettered retail competition in January 2011 and instead revert to a revised form of cost-based regulation. Dominion said: “We are seeing what is happening in other states – Maryland and Illinois primarily – and we recognize that retail competition will likely never be an efficient price regulator in Virginia, especially for residential customers.” (***EPD***, December 22, 2006, page 1)
  - S.B. 1406 was introduced in the VA General Assembly to stimulate discussion on possible re-regulation as a substitute for Dominion’s bill. William Mims, VA Deputy Attorney General, established meetings of 14 stakeholders including representatives of utilities, cooperatives and customers to seek a consensus. (***EPD***, January 24, 2007, page 1)
  - The State Senate approved S.B. 1416 by a vote of 37-2. The bill would end retail competition for customers who demand less than 5 MW, end capped retail rates, and direct Virginia’s State Corporation Commission to review utility rates every two years. A similar bill was passed earlier by the House of Delegates. The two bills must be reconciled to become law (**EPD,** February 7, 2007, page 1, **RT**, February 16, 2007, page 1)
  - Both houses of the General Assembly passed an electricity re-regulation bill and forwarded the bill to Governor Tim Kaine. He has until March

26 to ask for changes in the bill and the General Assembly will meet again on April 3 to consider the Governor's changes. The bill as passed was supported by Dominion Virginia Power. It would end the existing cap on retail rates on December 31, 2008 and direct the State Corporation Commission to review rates in 20098 and every two years thereafter. It would set each utility's allowable rate of return on equity at level at least equal to the average of the rates of return allowed for other, similar utilities in the Southeast. The Virginia Citizens Consumer Council has argued that bill represents a giveaway to utilities and environmental groups have said that the voluntary renewable standard would accomplish very little. Both groups have urged to the Governor to recommend changes (**EPD**, February 26, 2007)

- Governor Kaine signed HB 3068 and SB 1416 in essence ending customer choice for residential electricity users. The bill will provide the SCC with authority to keep VA's rates competitive with other states, double utilities' conservation and efficiency, provide incentives for clean energy generation, and give faster refunds to utility customers (**RT**, March 28, 207, p. 1)
- The House of Delegates and the Senate approved Gov.Kaine's amended version of the re-regulation bill which will end retail competition for all but the state's largest retail customers and implement a novel, "hybrid" form of rate regulation – importantly the law will exempt large industrial customers from the added cost a utility incurs in securing renewable energy (**EPD**, April 5, 2007, p. 1)

- **Western States:**
  - Members of the Large Public Power Council (LPPC) said the existing competitive market fails, among other things, to provide adequate hedging opportunities and financial transmission rights. In addition, the group said the costs associated with regional transmission organizations are too high. Tacoma Public Utilities Director Mark Crisson said his region of the country has yet to realize benefits from competition. He said the promised benefits of competition just aren't being delivered. The average cost of power for load serving entities is higher in ISOs and RTOs. Sacramento Municipal Utility District general manager, Jan Schori, said that he was glad that

FERC will be looking at the premise that competition always results in benefits for consumers. (***EPD***, January 29, 2007, page 1)
  - **Wisconsin:** The Wisconsin Public Service Commission said that a recent MISO study showing the benefits of the regional wholesale market was flawed. The PSC is creating a new Office of Wholesale Energy Economics and Finance which will focus on making sure that regional wholesale markets benefit Wisconsin customers (**EPD**, February 26, 2007, page 1)

Impact on Utilities

- While consumers are required to pay staggering increases in their electricity bills, some large generation owners in the same "electricity markets" are earning far more than under traditional regulation. Some anecdotal evidence includes:
  - Exelon earned 23.7% return on equity (ROE) overall in 2005 and over 30% ROE on its PJM generation fleet. (2005 Annual Report 10k as filed with the SEC)
  - Constellation Energy Group earned almost 30% ROE in 2005 and projects improved returns on its PJM generation portfolio in 2006 and beyond. (2005 Annual Report 10k as filed with the SEC and a presentation by E. Follin Smith, Constellation Energy Q1 2006 Earnings Presentation, April 28, 2006, slides 38-42)
  - PPL Corp. earned 17.5% ROE in 2005 overall, but over 20% on its PJM generation fleet. These returns are projected by PP&L to increase by 40% upon the removal of PP&L's current fixed price retail supply obligations in Pennsylvania, allowing PP&L to achieve a 28% ROE. (2005 Annual Report 10k as filed with the SEC and PPL Corp. Presentation at EEI's Annual Finance Committee Meeting, May 24-25, 2006)
  - Allegheny Energy earned only 8.3% ROE overall and 14% ROE on its PJM generation in 2005 due, in part, to their requirement to sell at cost based prices in much of their service territory. Allegheny projects improved results of 11% overall and 20% on their PJM generation in 2006 as their residential cost-based obligations in Maryland are replaced with market-based pricing. (2005 Annual Report 10k as filed with the SEC and Allegheny Energy Presentation at EEI's Annual Finance Committee Meeting, May 24-25, 2006)

RT = Restructuring Today, EPD = Electric Power Daily