

1 AMENDMENT TO SENATE BILL 25

2 AMENDMENT NO. _____. Amend Senate Bill 25 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by
5 changing Section 7-204 as follows:

6 (220 ILCS 5/7-204) (from Ch. 111 2/3, par. 7-204)
7 Sec. 7-204. Reorganization defined; Commission approval
8 therefore.

9 (a) For purposes of this Section, "reorganization" means
10 any transaction which, regardless of the means by which it is
11 accomplished, results in a change in the ownership of a
12 majority of the voting capital stock of an Illinois public
13 utility; or the ownership or control of any entity which owns
14 or controls a majority of the voting capital stock of a
15 public utility; or by which 2 public utilities merge, or by
16 which a public utility acquires substantially all of the
17 assets of another public utility; or the transactions
18 described in subsection (g); provided, however, that
19 "reorganization" as used in this Section shall not include a
20 mortgage or pledge transaction entered into to secure a bona
21 fide borrowing by the party granting the mortgage or making
22 the pledge.

1 In addition to the foregoing, "reorganization" shall
2 include for purposes of this Section any transaction which,
3 regardless of the means by which it is accomplished, will
4 have the effect of terminating the affiliated interest status
5 of any entity as defined in paragraphs (a), (b), (c) or (d)
6 of subsection (2) of Section 7-101 of this Act where such
7 entity had transactions with the public utility, in the 12
8 calendar months immediately preceding the date of termination
9 of such affiliated interest status subject to subsection (3)
10 of Section 7-101 of this Act with a value greater than 15% of
11 the public utility's revenues for that same 12-month period.
12 If the proposed transaction would have the effect of
13 terminating the affiliated interest status of more than one
14 Illinois public utility, the utility with the greatest
15 revenues for the 12-month period shall be used to determine
16 whether such proposed transaction is a reorganization for the
17 purposes of this Section. The Commission shall have
18 jurisdiction over any reorganization as defined herein.

19 (b) No reorganization shall take place without prior
20 Commission approval. The Commission shall not approve any
21 proposed reorganization if the Commission finds, after notice
22 and hearing, that the reorganization will adversely affect
23 the utility's ability to perform its duties under this Act.
24 In reviewing any proposed reorganization, the Commission must
25 find that:

26 (1) the proposed reorganization will not diminish
27 the utility's ability to provide adequate, reliable,
28 efficient, safe and least-cost public utility service;

29 (2) the proposed reorganization will not result in
30 the unjustified subsidization of non-utility activities
31 by the utility or its customers;

32 (3) costs and facilities are fairly and reasonably
33 allocated between utility and non-utility activities in
34 such a manner that the Commission may identify those

1 costs and facilities which are properly included by the
2 utility for ratemaking purposes;

3 (4) the proposed reorganization will not
4 significantly impair the utility's ability to raise
5 necessary capital on reasonable terms or to maintain a
6 reasonable capital structure;

7 (5) the utility will remain subject to all
8 applicable laws, regulations, rules, decisions and
9 policies governing the regulation of Illinois public
10 utilities;

11 (6) the proposed reorganization is not likely to
12 have a significant adverse effect on competition in those
13 markets over which the Commission has jurisdiction;

14 (7) the proposed reorganization is not likely to
15 result in any adverse rate impacts on retail customers.

16 (c) The Commission shall not approve a reorganization
17 without ruling on: (i) the allocation of any savings
18 resulting from the proposed reorganization; and (ii) whether
19 the companies should be allowed to recover any costs incurred
20 in accomplishing the proposed reorganization and, if so, the
21 amount of costs eligible for recovery and how the costs will
22 be allocated.

23 (d) The Commission shall issue its Order approving or
24 denying the proposed reorganization within 11 months after
25 the application is filed. The Commission may extend the
26 deadline for a period equivalent to the length of any delay
27 which the Commission finds to have been caused by the
28 Applicant's failure to provide data or information requested
29 by the Commission or that the Commission ordered the
30 Applicant to provide to the parties. The Commission may also
31 extend the deadline by an additional period not to exceed 3
32 months to consider amendments to the Applicant's filing, or
33 to consider reasonably unforeseeable changes in circumstances
34 subsequent to the Applicant's initial filing.

1 (e) Subsections (c) and (d) and subparagraphs (6) and
2 (7) of subsection (b) of this Section shall apply only to
3 merger applications submitted to the Commission subsequent to
4 April 23, 1997. No other Commission approvals shall be
5 required for mergers that are subject to this Section.

6 (f) In approving any proposed reorganization pursuant to
7 this Section the Commission may impose such terms, conditions
8 or requirements as, in its judgment, are necessary to protect
9 the interests of the public utility and its customers.

10 (g) The Commission shall, within 9 months after an
11 application is filed, issue its Order approving or denying
12 any proposed reorganization involving the acquisition by a
13 public utility or its affiliate of all of the common stock or
14 substantially all of the operating assets, whether by merger,
15 creation and acquisition of a limited liability or other
16 company, or otherwise, of another public utility that has
17 secured debt which is, or was, within the year prior to the
18 filing of the application, rated below investment grade by at
19 least 3 nationally recognized rating agencies. The Commission
20 shall in such a proceeding review and approve, with or
21 without modification, the entries to be made as a result of
22 such reorganization on the books and records of the
23 reorganized public utility. The Commission shall further have
24 the authority, consistent with State jurisdiction, to review
25 and approve in such proceeding any purchased power agreement
26 related to the reorganization agreement that is entered into
27 by the reorganized utility, or by a public utility that
28 becomes affiliated with such public utility as a result of
29 the reorganization, and may condition its approval of any
30 such agreement in such manner as it may deem necessary to
31 safeguard the public interest. Any approval of such agreement
32 does not constitute approval of payments thereunder for the
33 purpose of computing expense of operation in any rate
34 proceeding. If the reorganization involves the sale or

1 transfer of operating assets, then the Commission shall also
2 in such proceeding have the authority to make such other
3 determinations and approvals as may be required to implement
4 the reorganization and provide for an orderly transition,
5 including, but not limited to, providing for the adoption by
6 the reorganized public utility of existing rates, terms, and
7 conditions (including those filed pursuant to Section 16-108
8 or Article XVIII of this Act), the abandonment, transfer or
9 granting of certificates, or the assignment of service area
10 agreements. Any application filed pursuant to this subsection
11 (g) must be filed no later than 3 months after the effective
12 date of this amendatory Act of the 93rd General Assembly.

13 (Source: P.A. 90-561, eff. 12-16-97.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law."