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LRB094 06764 MJR 60301 a

1 AMENDMENT TO HOUSE BILL 607

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 607 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by changing  
5 Sections 16-102, 16-111, and 16-113 as follows:

6 (220 ILCS 5/16-102)

7 Sec. 16-102. Definitions. For the purposes of this Article  
8 the following terms shall be defined as set forth in this  
9 Section.

10 "Alternative retail electric supplier" means every person,  
11 cooperative, corporation, municipal corporation, company,  
12 association, joint stock company or association, firm,  
13 partnership, individual, or other entity, their lessees,  
14 trustees, or receivers appointed by any court whatsoever, that  
15 offers electric power or energy for sale, lease or in exchange  
16 for other value received to one or more retail customers, or  
17 that engages in the delivery or furnishing of electric power or  
18 energy to such retail customers, and shall include, without  
19 limitation, resellers, aggregators and power marketers, but  
20 shall not include (i) electric utilities (or any agent of the  
21 electric utility to the extent the electric utility provides  
22 tariffed services to retail customers through that agent), (ii)  
23 any electric cooperative or municipal system as defined in  
24 Section 17-100 to the extent that the electric cooperative or

1 municipal system is serving retail customers within any area in  
2 which it is or would be entitled to provide service under the  
3 law in effect immediately prior to the effective date of this  
4 amendatory Act of 1997, (iii) a public utility that is owned  
5 and operated by any public institution of higher education of  
6 this State, or a public utility that is owned by such public  
7 institution of higher education and operated by any of its  
8 lessees or operating agents, within any area in which it is or  
9 would be entitled to provide service under the law in effect  
10 immediately prior to the effective date of this amendatory Act  
11 of 1997, (iv) a retail customer to the extent that customer  
12 obtains its electric power and energy from that customer's own  
13 cogeneration or self-generation facilities, (v) an entity that  
14 owns, operates, sells, or arranges for the installation of a  
15 customer's own cogeneration or self-generation facilities, but  
16 only to the extent the entity is engaged in owning, selling or  
17 arranging for the installation of such facility, or operating  
18 the facility on behalf of such customer, provided however that  
19 any such third party owner or operator of a facility built  
20 after January 1, 1999, complies with the labor provisions of  
21 Section 16-128(a) as though such third party were an  
22 alternative retail electric supplier, or (vi) an industrial or  
23 manufacturing customer that owns its own distribution  
24 facilities, to the extent that the customer provides service  
25 from that distribution system to a third-party contractor  
26 located on the customer's premises that is integrally and  
27 predominantly engaged in the customer's industrial or  
28 manufacturing process; provided, that if the industrial or  
29 manufacturing customer has elected delivery services, the  
30 customer shall pay transition charges applicable to the  
31 electric power and energy consumed by the third-party  
32 contractor unless such charges are otherwise paid by the third  
33 party contractor, which shall be calculated based on the usage  
34 of, and the base rates or the contract rates applicable to, the

1 third-party contractor in accordance with Section 16-102.

2 "Base rates" means the rates for those tariffed services  
3 that the electric utility is required to offer pursuant to  
4 subsection (a) of Section 16-103 and that were identified in a  
5 rate order for collection of the electric utility's base rate  
6 revenue requirement, excluding (i) separate automatic rate  
7 adjustment riders then in effect, (ii) special or negotiated  
8 contract rates, (iii) delivery services tariffs filed pursuant  
9 to Section 16-108, (iv) real-time pricing, or (v) tariffs that  
10 were in effect prior to October 1, 1996 and that based charges  
11 for services on an index or average of other utilities'  
12 charges, but including (vi) any subsequent redesign of such  
13 rates for tariffed services that is authorized by the  
14 Commission after notice and hearing.

15 "Competitive service" includes (i) any service that has  
16 been declared to be competitive pursuant to Section 16-113 of  
17 this Act, (ii) contract service, and (iii) services, other than  
18 tariffed services, that are related to, but not necessary for,  
19 the provision of electric power and energy or delivery  
20 services.

21 "Contract service" means (1) services, including the  
22 provision of electric power and energy or other services, that  
23 are provided by mutual agreement between an electric utility  
24 and a retail customer that is located in the electric utility's  
25 service area, provided that, delivery services shall not be a  
26 contract service until such services are declared competitive  
27 pursuant to Section 16-113; and also means (2) the provision of  
28 electric power and energy by an electric utility to retail  
29 customers outside the electric utility's service area pursuant  
30 to Section 16-116. Provided, however, contract service does not  
31 include electric utility services provided pursuant to (i)  
32 contracts that retail customers are required to execute as a  
33 condition of receiving tariffed services, or (ii) special or  
34 negotiated rate contracts for electric utility services that

1 were entered into between an electric utility and a retail  
2 customer prior to the effective date of this amendatory Act of  
3 1997 and filed with the Commission.

4 "Delivery services" means those services provided by the  
5 electric utility that are necessary in order for the  
6 transmission and distribution systems to function so that  
7 retail customers located in the electric utility's service area  
8 can receive electric power and energy from suppliers other than  
9 the electric utility, and shall include, without limitation,  
10 standard metering and billing services.

11 "Electric utility" means a public utility, as defined in  
12 Section 3-105 of this Act, that has a franchise, license,  
13 permit or right to furnish or sell electricity to retail  
14 customers within a service area.

15 "Mandatory transition period" means the period from the  
16 effective date of this amendatory Act of 1997 through the date  
17 on which the Commission has approved declarations of  
18 competitive service, pursuant to Section 16-113, for all  
19 classes of service offered in the service areas of all electric  
20 utilities that, on December 31, 2005, served at least 100,000  
21 customers ~~January 1, 2007.~~

22 "Municipal system" shall have the meaning set forth in  
23 Section 17-100.

24 "Real-time pricing" means tariffed retail charges for  
25 delivered electric power and energy that vary hour-to-hour and  
26 are determined from wholesale market prices using a methodology  
27 approved by the Illinois Commerce Commission.

28 "Retail customer" means a single entity using electric  
29 power or energy at a single premises and that (A) either (i) is  
30 receiving or is eligible to receive tariffed services from an  
31 electric utility, or (ii) that is served by a municipal system  
32 or electric cooperative within any area in which the municipal  
33 system or electric cooperative is or would be entitled to  
34 provide service under the law in effect immediately prior to

1 the effective date of this amendatory Act of 1997, or (B) an  
2 entity which on the effective date of this Act was receiving  
3 electric service from a public utility and (i) was engaged in  
4 the practice of resale and redistribution of such electricity  
5 within a building prior to January 2, 1957, or (ii) was  
6 providing lighting services to tenants in a multi-occupancy  
7 building, but only to the extent such resale, redistribution or  
8 lighting service is authorized by the electric utility's  
9 tariffs that were on file with the Commission on the effective  
10 date of this Act.

11 "Service area" means (i) the geographic area within which  
12 an electric utility was lawfully entitled to provide electric  
13 power and energy to retail customers as of the effective date  
14 of this amendatory Act of 1997, and includes (ii) the location  
15 of any retail customer to which the electric utility was  
16 lawfully providing electric utility services on such effective  
17 date.

18 "Small commercial retail customer" means those  
19 nonresidential retail customers of an electric utility  
20 consuming 15,000 kilowatt-hours or less of electricity  
21 annually in its service area.

22 "Tariffed service" means services provided to retail  
23 customers by an electric utility as defined by its rates on  
24 file with the Commission pursuant to the provisions of Article  
25 IX of this Act, but shall not include competitive services.

26 "Transition charge" means a charge expressed in cents per  
27 kilowatt-hour that is calculated for a customer or class of  
28 customers as follows for each year in which an electric utility  
29 is entitled to recover transition charges as provided in  
30 Section 16-108:

31 (1) the amount of revenue that an electric utility  
32 would receive from the retail customer or customers if it  
33 were serving such customers' electric power and energy  
34 requirements as a tariffed service based on (A) all of the

1 customers' actual usage during the 3 years ending 90 days  
2 prior to the date on which such customers were first  
3 eligible for delivery services pursuant to Section 16-104,  
4 and (B) on (i) the base rates in effect on October 1, 1996  
5 (adjusted for the reductions required by subsection (b) of  
6 Section 16-111, for any reduction resulting from a rate  
7 decrease under Section 16-101(b), for any restatement of  
8 base rates made in conjunction with an elimination of the  
9 fuel adjustment clause pursuant to subsection (b), (d), or  
10 (f) of Section 9-220 and for any removal of decommissioning  
11 costs from base rates pursuant to Section 16-114) and any  
12 separate automatic rate adjustment riders (other than a  
13 decommissioning rate as defined in Section 16-114) under  
14 which the customers were receiving or, had they been  
15 customers, would have received electric power and energy  
16 from the electric utility during the year immediately  
17 preceding the date on which such customers were first  
18 eligible for delivery service pursuant to Section 16-104,  
19 or (ii) to the extent applicable, any contract rates,  
20 including contracts or rates for consolidated or  
21 aggregated billing, under which such customers were  
22 receiving electric power and energy from the electric  
23 utility during such year;

24 (2) less the amount of revenue, other than revenue from  
25 transition charges and decommissioning rates, that the  
26 electric utility would receive from such retail customers  
27 for delivery services provided by the electric utility,  
28 assuming such customers were taking delivery services for  
29 all of their usage, based on the delivery services tariffs  
30 in effect during the year for which the transition charge  
31 is being calculated and on the usage identified in  
32 paragraph (1);

33 (3) less the market value for the electric power and  
34 energy that the electric utility would have used to supply

1 all of such customers' electric power and energy  
2 requirements, as a tariffed service, based on the usage  
3 identified in paragraph (1), with such market value  
4 determined in accordance with Section 16-112 of this Act;

5 (4) less the following amount which represents the  
6 amount to be attributed to new revenue sources and cost  
7 reductions by the electric utility through the end of the  
8 period for which transition costs are recovered pursuant to  
9 Section 16-108, referred to in this Article XVI as a  
10 "mitigation factor":

11 (A) for nonresidential retail customers, an amount  
12 equal to the greater of (i) 0.5 cents per kilowatt-hour  
13 during the period October 1, 1999 through December 31,  
14 2004, 0.6 cents per kilowatt-hour in calendar year  
15 2005, and 0.9 cents per kilowatt-hour in calendar year  
16 2006, multiplied in each year by the usage identified  
17 in paragraph (1), or (ii) an amount equal to the  
18 following percentages of the amount produced by  
19 applying the applicable base rates (adjusted as  
20 described in subparagraph (1)(B)) or contract rate to  
21 the usage identified in paragraph (1): 8% for the  
22 period October 1, 1999 through December 31, 2002, 10%  
23 in calendar years 2003 and 2004, 11% in calendar year  
24 2005 and 12% in calendar year 2006; and

25 (B) for residential retail customers, an amount  
26 equal to the following percentages of the amount  
27 produced by applying the base rates in effect on  
28 October 1, 1996 (adjusted as described in subparagraph  
29 (1)(B)) to the usage identified in paragraph (1): (i)  
30 6% from May 1, 2002 through December 31, 2002, (ii) 7%  
31 in calendar years 2003 and 2004, (iii) 8% in calendar  
32 year 2005, and (iv) 10% in calendar year 2006;

33 (5) divided by the usage of such customers identified  
34 in paragraph (1),

1 provided that the transition charge shall never be less than  
2 zero.

3 "Unbundled service" means a component or constituent part  
4 of a tariffed service which the electric utility subsequently  
5 offers separately to its customers.

6 (Source: P.A. 94-977, eff. 6-30-06.)

7 (220 ILCS 5/16-111)

8 Sec. 16-111. Rates and restructuring transactions during  
9 mandatory transition period.

10 (a) During the mandatory transition period,  
11 notwithstanding any provision of Article IX of this Act, and  
12 except as provided in subsections (b), (d), (e), and (f) of  
13 this Section, the Commission shall not, prior to 2010, (i)  
14 initiate, authorize or order any change by way of increase  
15 (other than in connection with a request for rate increase  
16 which was filed after September 1, 1997 but prior to October  
17 15, 1997, by an electric utility serving less than 12,500  
18 customers in this State) or (ii), ~~(ii) initiate or, unless~~  
19 ~~requested by the electric utility, authorize or order any~~  
20 ~~change by way of decrease, restructuring or unbundling (except~~  
21 ~~as provided in Section 16-109A), in the rates of any electric~~  
22 ~~utility that were in effect on October 1, 1996, or (iii) in any~~  
23 order approving any application for a merger pursuant to  
24 Section 7-204 that was pending as of May 16, 1997, impose any  
25 condition requiring any filing for an increase, decrease, or  
26 change in, or other review of, an electric utility's rates or  
27 enforce any such condition of any such order; provided,  
28 however, that this subsection shall not prohibit the Commission  
29 from:

30 (1) (blank); ~~approving the application of an electric~~  
31 ~~utility to implement an alternative to rate of return~~  
32 ~~regulation or a regulatory mechanism that rewards or~~  
33 ~~penalizes the electric utility through adjustment of rates~~



1 ~~based on utility performance, pursuant to Section 9-244;~~

2 (2) authorizing an electric utility to eliminate its  
3 fuel adjustment clause and adjust its base rate tariffs in  
4 accordance with subsection (b), (d), or (f) of Section  
5 9-220 of this Act, to fix its fuel adjustment factor in  
6 accordance with subsection (c) of Section 9-220 of this  
7 Act, or to eliminate its fuel adjustment clause in  
8 accordance with subsection (e) of Section 9-220 of this  
9 Act;

10 (3) ordering into effect tariffs for delivery services  
11 and transition charges in accordance with Sections 16-104  
12 and 16-108, for real-time pricing in accordance with  
13 Section 16-107, or the options required by Section 16-110  
14 and subsection (n) of 16-112, allowing a billing experiment  
15 in accordance with Section 16-106, or modifying delivery  
16 services tariffs in accordance with Section 16-109; or

17 (4) ordering or allowing into effect any tariff to  
18 recover charges pursuant to Sections 9-201.5, 9-220.1,  
19 9-221, 9-222 (except as provided in Section 9-222.1),  
20 16-108, and 16-114 of this Act, Section 5-5 of the  
21 Electricity Infrastructure Maintenance Fee Law, Section  
22 6-5 of the Renewable Energy, Energy Efficiency, and Coal  
23 Resources Development Law of 1997, and Section 13 of the  
24 Energy Assistance Act.

25 After December 31, 2004, the provisions of this subsection  
26 (a) shall not apply to an electric utility whose average  
27 residential retail rate was less than or equal to 90% of the  
28 average residential retail rate for the "Midwest Utilities", as  
29 that term is defined in subsection (b) of this Section, based  
30 on data reported on Form 1 to the Federal Energy Regulatory  
31 Commission for calendar year 1995, and which served between  
32 150,000 and 250,000 retail customers in this State on January  
33 1, 1995 unless the electric utility or its holding company has  
34 been acquired by or merged with an affiliate of another

1 electric utility subsequent to January 1, 2002. This exemption  
2 shall be limited to this subsection (a) and shall not extend to  
3 any other provisions of this Act.

4 (a-5) During the remainder of the mandatory transition  
5 period, if any, the Commission may modify rates in accordance  
6 with Article IX of this Act.

7 (b) Notwithstanding the provisions of subsection (a), each  
8 Illinois electric utility serving more than 12,500 customers in  
9 Illinois shall file tariffs (i) reducing, effective August 1,  
10 1998, each component of its base rates to residential retail  
11 customers by 15% from the base rates in effect immediately  
12 prior to January 1, 1998 and (ii) if the public utility  
13 provides electric service to (A) more than 500,000 customers  
14 but less than 1,000,000 customers in this State on January 1,  
15 1999, reducing, effective May 1, 2002, each component of its  
16 base rates to residential retail customers by an additional 5%  
17 from the base rates in effect immediately prior to January 1,  
18 1998, or (B) at least 1,000,000 customers in this State on  
19 January 1, 1999, reducing, effective October 1, 2001, each  
20 component of its base rates to residential retail customers by  
21 an additional 5% from the base rates in effect immediately  
22 prior to January 1, 1998. Provided, however, that (A) if an  
23 electric utility's average residential retail rate is less than  
24 or equal to the average residential retail rate for a group of  
25 Midwest Utilities (consisting of all investor-owned electric  
26 utilities with annual system peaks in excess of 1000 megawatts  
27 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,  
28 Missouri, Ohio, and Wisconsin), based on data reported on Form  
29 1 to the Federal Energy Regulatory Commission for calendar year  
30 1995, then it shall only be required to file tariffs (i)  
31 reducing, effective August 1, 1998, each component of its base  
32 rates to residential retail customers by 5% from the base rates  
33 in effect immediately prior to January 1, 1998, (ii) reducing,  
34 effective October 1, 2000, each component of its base rates to

1 residential retail customers by the lesser of 5% of the base  
2 rates in effect immediately prior to January 1, 1998 or the  
3 percentage by which the electric utility's average residential  
4 retail rate exceeds the average residential retail rate of the  
5 Midwest Utilities, based on data reported on Form 1 to the  
6 Federal Energy Regulatory Commission for calendar year 1999,  
7 and (iii) reducing, effective October 1, 2002, each component  
8 of its base rates to residential retail customers by an  
9 additional amount equal to the lesser of 5% of the base rates  
10 in effect immediately prior to January 1, 1998 or the  
11 percentage by which the electric utility's average residential  
12 retail rate exceeds the average residential retail rate of the  
13 Midwest Utilities, based on data reported on Form 1 to the  
14 Federal Energy Regulatory Commission for calendar year 2001;  
15 and (B) if the average residential retail rate of an electric  
16 utility serving between 150,000 and 250,000 retail customers in  
17 this State on January 1, 1995 is less than or equal to 90% of  
18 the average residential retail rate for the Midwest Utilities,  
19 based on data reported on Form 1 to the Federal Energy  
20 Regulatory Commission for calendar year 1995, then it shall  
21 only be required to file tariffs (i) reducing, effective August  
22 1, 1998, each component of its base rates to residential retail  
23 customers by 2% from the base rates in effect immediately prior  
24 to January 1, 1998; (ii) reducing, effective October 1, 2000,  
25 each component of its base rates to residential retail  
26 customers by 2% from the base rate in effect immediately prior  
27 to January 1, 1998; and (iii) reducing, effective October 1,  
28 2002, each component of its base rates to residential retail  
29 customers by 1% from the base rates in effect immediately prior  
30 to January 1, 1998. Provided, further, that any electric  
31 utility for which a decrease in base rates has been or is  
32 placed into effect between October 1, 1996 and the dates  
33 specified in the preceding sentences of this subsection, other  
34 than pursuant to the requirements of this subsection, shall be

1 entitled to reduce the amount of any reduction or reductions in  
2 its base rates required by this subsection by the amount of  
3 such other decrease. The tariffs required under this subsection  
4 shall be filed 45 days in advance of the effective date.  
5 Notwithstanding anything to the contrary in Section 9-220 of  
6 this Act, no restatement of base rates in conjunction with the  
7 elimination of a fuel adjustment clause under that Section  
8 shall result in a lesser decrease in base rates than customers  
9 would otherwise receive under this subsection had the electric  
10 utility's fuel adjustment clause not been eliminated.

11 (c) Any utility reducing its base rates by 15% on August 1,  
12 1998 pursuant to subsection (b) shall include the following  
13 statement on its bills for residential customers from August 1  
14 through December 31, 1998: "Effective August 1, 1998, your  
15 rates have been reduced by 15% by the Electric Service Customer  
16 Choice and Rate Relief Law of 1997 passed by the Illinois  
17 General Assembly.". Any utility reducing its base rates by 5%  
18 on August 1, 1998, pursuant to subsection (b) shall include the  
19 following statement on its bills for residential customers from  
20 August 1 through December 31, 1998: "Effective August 1, 1998,  
21 your rates have been reduced by 5% by the Electric Service  
22 Customer Choice and Rate Relief Law of 1997 passed by the  
23 Illinois General Assembly.".

24 Any utility reducing its base rates by 2% on August 1, 1998  
25 pursuant to subsection (b) shall include the following  
26 statement on its bills for residential customers from August 1  
27 through December 31, 1998: "Effective August 1, 1998, your  
28 rates have been reduced by 2% by the Electric Service Customer  
29 Choice and Rate Relief Law of 1997 passed by the Illinois  
30 General Assembly.".

31 (d) During the mandatory transition period, but not before  
32 January 1, 2000, and notwithstanding the provisions of  
33 subsection (a), an electric utility may request an increase in  
34 its base rates if the electric utility demonstrates that the

1 2-year average of its earned rate of return on common equity,  
2 calculated as its net income applicable to common stock divided  
3 by the average of its beginning and ending balances of common  
4 equity using data reported in the electric utility's Form 1  
5 report to the Federal Energy Regulatory Commission but adjusted  
6 to remove the effects of accelerated depreciation or  
7 amortization or other transition or mitigation measures  
8 implemented by the electric utility pursuant to subsection (g)  
9 of this Section and the effect of any refund paid pursuant to  
10 subsection (e) of this Section, is below the 2-year average for  
11 the same 2 years of the monthly average yields of 30-year U.S.  
12 Treasury bonds published by the Board of Governors of the  
13 Federal Reserve System in its weekly H.15 Statistical Release  
14 or successor publication. The Commission shall review the  
15 electric utility's request, and may review the justness and  
16 reasonableness of all rates for tariffed services, in  
17 accordance with the provisions of Article IX of this Act,  
18 provided that the Commission shall consider any special or  
19 negotiated adjustments to the revenue requirement agreed to  
20 between the electric utility and the other parties to the  
21 proceeding. In setting rates under this Section, the Commission  
22 shall exclude the costs and revenues that are associated with  
23 competitive services and any billing or pricing experiments  
24 conducted under Section 16-106.

25 (e) For the purposes of this subsection (e) all  
26 calculations and comparisons shall be performed for the  
27 Illinois operations of multijurisdictional utilities. During  
28 the mandatory transition period, notwithstanding the  
29 provisions of subsection (a), if the 2-year average of an  
30 electric utility's earned rate of return on common equity,  
31 calculated as its net income applicable to common stock divided  
32 by the average of its beginning and ending balances of common  
33 equity using data reported in the electric utility's Form 1  
34 report to the Federal Energy Regulatory Commission but adjusted

1 to remove the effect of any refund paid under this subsection  
2 (e), and further adjusted to include the annual amortization of  
3 any difference between the consideration received by an  
4 affiliated interest of the electric utility in the sale of an  
5 asset which had been sold or transferred by the electric  
6 utility to the affiliated interest subsequent to the effective  
7 date of this amendatory Act of 1997 and the consideration for  
8 which such asset had been sold or transferred to the affiliated  
9 interest, with such difference to be amortized ratably from the  
10 date of the sale by the affiliated interest to December 31,  
11 2006, exceeds the 2-year average of the Index for the same 2  
12 years by 1.5 or more percentage points, the electric utility  
13 shall make refunds to customers beginning the first billing day  
14 of April in the following year in the manner described in  
15 paragraph (3) of this subsection. For purposes of this  
16 subsection (e), the "Index" shall be the sum of (A) the average  
17 for the 12 months ended September 30 of the monthly average  
18 yields of 30-year U.S. Treasury bonds published by the Board of  
19 Governors of the Federal Reserve System in its weekly H.15  
20 Statistical Release or successor publication for each year 1998  
21 through 2006, and (B) (i) 4.00 percentage points for each of  
22 the 12-month periods ending September 30, 1998 through  
23 September 30, 1999 or 8.00 percentage points if the electric  
24 utility's average residential retail rate is less than or equal  
25 to 90% of the average residential retail rate for the "Midwest  
26 Utilities", as that term is defined in subsection (b) of this  
27 Section, based on data reported on Form 1 to the Federal Energy  
28 Regulatory Commission for calendar year 1995, and the electric  
29 utility served between 150,000 and 250,000 retail customers on  
30 January 1, 1995, (ii) 7.00 percentage points for each of the  
31 12-month periods ending September 30, 2000 through September  
32 30, 2006 if the electric utility was providing service to at  
33 least 1,000,000 customers in this State on January 1, 1999, or  
34 9.00 percentage points if the electric utility's average

1 residential retail rate is less than or equal to 90% of the  
2 average residential retail rate for the "Midwest Utilities", as  
3 that term is defined in subsection (b) of this Section, based  
4 on data reported on Form 1 to the Federal Energy Regulatory  
5 Commission for calendar year 1995 and the electric utility  
6 served between 150,000 and 250,000 retail customers in this  
7 State on January 1, 1995, (iii) 11.00 percentage points for  
8 each of the 12-month periods ending September 30, 2000 through  
9 September 30, 2006, but only if the electric utility's average  
10 residential retail rate is less than or equal to 90% of the  
11 average residential retail rate for the "Midwest Utilities", as  
12 that term is defined in subsection (b) of this Section, based  
13 on data reported on Form 1 to the Federal Energy Regulatory  
14 Commission for calendar year 1995, the electric utility served  
15 between 150,000 and 250,000 retail customers in this State on  
16 January 1, 1995, and the electric utility offers delivery  
17 services on or before June 1, 2000 to retail customers whose  
18 annual electric energy use comprises 33% of the kilowatt hour  
19 sales to that group of retail customers that are classified  
20 under Division D, Groups 20 through 39 of the Standard  
21 Industrial Classifications set forth in the Standard  
22 Industrial Classification Manual published by the United  
23 States Office of Management and Budget, excluding the kilowatt  
24 hour sales to those customers that are eligible for delivery  
25 services pursuant to Section 16-104(a)(1)(i), and offers  
26 delivery services to its remaining retail customers classified  
27 under Division D, Groups 20 through 39 on or before October 1,  
28 2000, and, provided further, that the electric utility commits  
29 not to petition pursuant to Section 16-108(f) for entry of an  
30 order by the Commission authorizing the electric utility to  
31 implement transition charges for an additional period after  
32 December 31, 2006, or (iv) 5.00 percentage points for each of  
33 the 12-month periods ending September 30, 2000 through  
34 September 30, 2006 for all other electric utilities or 7.00

1 percentage points for such utilities for each of the 12-month  
2 periods ending September 30, 2000 through September 30, 2006  
3 for any such utility that commits not to petition pursuant to  
4 Section 16-108(f) for entry of an order by the Commission  
5 authorizing the electric utility to implement transition  
6 charges for an additional period after December 31, 2006 or  
7 11.00 percentage points for each of the 12-month periods ending  
8 September 30, 2005 and September 30, 2006 for each electric  
9 utility providing service to fewer than 6,500, or between  
10 75,000 and 150,000, electric retail customers in this State on  
11 January 1, 1995 if such utility commits not to petition  
12 pursuant to Section 16-108(f) for entry of an order by the  
13 Commission authorizing the electric utility to implement  
14 transition charges for an additional period after December 31,  
15 2006.

16 (1) For purposes of this subsection (e), "excess  
17 earnings" means the difference between (A) the 2-year  
18 average of the electric utility's earned rate of return on  
19 common equity, less (B) the 2-year average of the sum of  
20 (i) the Index applicable to each of the 2 years and (ii)  
21 1.5 percentage points; provided, that "excess earnings"  
22 shall never be less than zero.

23 (2) On or before March 31 of each year 2000 through  
24 2007 each electric utility shall file a report with the  
25 Commission showing its earned rate of return on common  
26 equity, calculated in accordance with this subsection, for  
27 the preceding calendar year and the average for the  
28 preceding 2 calendar years.

29 (3) If an electric utility has excess earnings,  
30 determined in accordance with paragraphs (1) and (2) of  
31 this subsection, the refunds which the electric utility  
32 shall pay to its customers beginning the first billing day  
33 of April in the following year shall be calculated and  
34 applied as follows:



1           (i) The electric utility's excess earnings shall  
2 be multiplied by the average of the beginning and  
3 ending balances of the electric utility's common  
4 equity for the 2-year period in which excess earnings  
5 occurred.

6           (ii) The result of the calculation in (i) shall be  
7 multiplied by 0.50 and then divided by a number equal  
8 to 1 minus the electric utility's composite federal and  
9 State income tax rate.

10           (iii) The result of the calculation in (ii) shall  
11 be divided by the sum of the electric utility's  
12 projected total kilowatt-hour sales to retail  
13 customers plus projected kilowatt-hours to be  
14 delivered to delivery services customers over a one  
15 year period beginning with the first billing date in  
16 April in the succeeding year to determine a cents per  
17 kilowatt-hour refund factor.

18           (iv) The cents per kilowatt-hour refund factor  
19 calculated in (iii) shall be credited to the electric  
20 utility's customers by applying the factor on the  
21 customer's monthly bills to each kilowatt-hour sold or  
22 delivered until the total amount calculated in (ii) has  
23 been paid to customers.

24           (f) During the mandatory transition period, an electric  
25 utility may file revised tariffs reducing the price of any  
26 tariffed service offered by the electric utility for all  
27 customers taking that tariffed service, which shall be  
28 effective 7 days after filing.

29           (g) During the mandatory transition period, an electric  
30 utility may, without obtaining any approval of the Commission  
31 other than that provided for in this subsection and  
32 notwithstanding any other provision of this Act or any rule or  
33 regulation of the Commission that would require such approval:

34           (1) implement a reorganization, other than a merger of

1           2 or more public utilities as defined in Section 3-105 or  
2           their holding companies;

3           (2) retire generating plants from service;

4           (3) sell, assign, lease or otherwise transfer assets to  
5           an affiliated or unaffiliated entity and as part of such  
6           transaction enter into service agreements, power purchase  
7           agreements, or other agreements with the transferee;  
8           provided, however, that the prices, terms and conditions of  
9           any power purchase agreement must be approved or allowed  
10          into effect by the Federal Energy Regulatory Commission; or

11          (4) use any accelerated cost recovery method including  
12          accelerated depreciation, accelerated amortization or  
13          other capital recovery methods, or record reductions to the  
14          original cost of its assets.

15          In order to implement a reorganization, retire generating  
16          plants from service, or sell, assign, lease or otherwise  
17          transfer assets pursuant to this Section, the electric utility  
18          shall comply with subsections (c) and (d) of Section 16-128, if  
19          applicable, and subsection (k) of this Section, if applicable,  
20          and provide the Commission with at least 30 days notice of the  
21          proposed reorganization or transaction, which notice shall  
22          include the following information:

23                 (i) a complete statement of the entries that the  
24                 electric utility will make on its books and records of  
25                 account to implement the proposed reorganization or  
26                 transaction together with a certification from an  
27                 independent certified public accountant that such  
28                 entries are in accord with generally accepted  
29                 accounting principles and, if the Commission has  
30                 previously approved guidelines for cost allocations  
31                 between the utility and its affiliates, a  
32                 certification from the chief accounting officer of the  
33                 utility that such entries are in accord with those cost  
34                 allocation guidelines;

1           (ii) a description of how the electric utility will  
2 use proceeds of any sale, assignment, lease or transfer  
3 to retire debt or otherwise reduce or recover the costs  
4 of services provided by such electric utility;

5           (iii) a list of all federal approvals or approvals  
6 required from departments and agencies of this State,  
7 other than the Commission, that the electric utility  
8 has or will obtain before implementing the  
9 reorganization or transaction;

10           (iv) an irrevocable commitment by the electric  
11 utility that it will not, as a result of the  
12 transaction, impose any stranded cost charges that it  
13 might otherwise be allowed to charge retail customers  
14 under federal law or increase the transition charges  
15 that it is otherwise entitled to collect under this  
16 Article XVI; and

17           (v) if the electric utility proposes to sell,  
18 assign, lease or otherwise transfer a generating plant  
19 that brings the amount of net dependable generating  
20 capacity transferred pursuant to this subsection to an  
21 amount equal to or greater than 15% of the electric  
22 utility's net dependable capacity as of the effective  
23 date of this amendatory Act of 1997, and enters into a  
24 power purchase agreement with the entity to which such  
25 generating plant is sold, assigned, leased, or  
26 otherwise transferred, the electric utility also  
27 agrees, if its fuel adjustment clause has not already  
28 been eliminated, to eliminate its fuel adjustment  
29 clause in accordance with subsection (b) of Section  
30 9-220 for a period of time equal to the length of any  
31 such power purchase agreement or successor agreement,  
32 or until January 1, 2005, whichever is longer; if the  
33 capacity of the generating plant so transferred and  
34 related power purchase agreement does not result in the

1 elimination of the fuel adjustment clause under this  
2 subsection, and the fuel adjustment clause has not  
3 already been eliminated, the electric utility shall  
4 agree that the costs associated with the transferred  
5 plant that are included in the calculation of the rate  
6 per kilowatt-hour to be applied pursuant to the  
7 electric utility's fuel adjustment clause during such  
8 period shall not exceed the per kilowatt-hour cost  
9 associated with such generating plant included in the  
10 electric utility's fuel adjustment clause during the  
11 full calendar year preceding the transfer, with such  
12 limit to be adjusted each year thereafter by the Gross  
13 Domestic Product Implicit Price Deflator.

14 (vi) In addition, if the electric utility proposes  
15 to sell, assign, or lease, (A) either (1) an amount of  
16 generating plant that brings the amount of net  
17 dependable generating capacity transferred pursuant to  
18 this subsection to an amount equal to or greater than  
19 15% of its net dependable capacity on the effective  
20 date of this amendatory Act of 1997, or (2) one or more  
21 generating plants with a total net dependable capacity  
22 of 1100 megawatts, or (B) transmission and  
23 distribution facilities that either (1) bring the  
24 amount of transmission and distribution facilities  
25 transferred pursuant to this subsection to an amount  
26 equal to or greater than 15% of the electric utility's  
27 total depreciated original cost investment in such  
28 facilities, or (2) represent an investment of  
29 \$25,000,000 in terms of total depreciated original  
30 cost, the electric utility shall provide, in addition  
31 to the information listed in subparagraphs (i) through  
32 (v), the following information: (A) a description of  
33 how the electric utility will meet its service  
34 obligations under this Act in a safe and reliable

1 manner and (B) the electric utility's projected earned  
2 rate of return on common equity, calculated in  
3 accordance with subsection (d) of this Section, for  
4 each year from the date of the notice through December  
5 31, 2006 both with and without the proposed  
6 transaction. If the Commission has not issued an order  
7 initiating a hearing on the proposed transaction  
8 within 30 days after the date the electric utility's  
9 notice is filed, the transaction shall be deemed  
10 approved. The Commission may, after notice and  
11 hearing, prohibit the proposed transaction if it makes  
12 either or both of the following findings: (1) that the  
13 proposed transaction will render the electric utility  
14 unable to provide its tariffed services in a safe and  
15 reliable manner, or (2) that there is a strong  
16 likelihood that consummation of the proposed  
17 transaction will result in the electric utility being  
18 entitled to request an increase in its base rates  
19 during the mandatory transition period pursuant to  
20 subsection (d) of this Section. Any hearing initiated  
21 by the Commission into the proposed transaction shall  
22 be completed, and the Commission's final order  
23 approving or prohibiting the proposed transaction  
24 shall be entered, within 90 days after the date the  
25 electric utility's notice was filed. Provided,  
26 however, that a sale, assignment, or lease of  
27 transmission facilities to an independent system  
28 operator that meets the requirements of Section 16-126  
29 shall not be subject to Commission approval under this  
30 Section.

31 In any proceeding conducted by the Commission  
32 pursuant to this subparagraph (vi), intervention shall  
33 be limited to parties with a direct interest in the  
34 transaction which is the subject of the hearing and any

1 statutory consumer protection agency as defined in  
2 subsection (d) of Section 9-102.1. Notwithstanding the  
3 provisions of Section 10-113 of this Act, any  
4 application seeking rehearing of an order issued under  
5 this subparagraph (vi), whether filed by the electric  
6 utility or by an intervening party, shall be filed  
7 within 10 days after service of the order.

8 The Commission shall not in any subsequent proceeding or  
9 otherwise, review such a reorganization or other transaction  
10 authorized by this Section, but shall retain the authority to  
11 allocate costs as stated in Section 16-111(i). An entity to  
12 which an electric utility sells, assigns, leases or transfers  
13 assets pursuant to this subsection (g) shall not, as a result  
14 of the transactions specified in this subsection (g), be deemed  
15 a public utility as defined in Section 3-105. Nothing in this  
16 subsection (g) shall change any requirement under the  
17 jurisdiction of the Illinois Department of Nuclear Safety  
18 including, but not limited to, the payment of fees. Nothing in  
19 this subsection (g) shall exempt a utility from obtaining a  
20 certificate pursuant to Section 8-406 of this Act for the  
21 construction of a new electric generating facility. Nothing in  
22 this subsection (g) is intended to exempt the transactions  
23 hereunder from the operation of the federal or State antitrust  
24 laws. Nothing in this subsection (g) shall require an electric  
25 utility to use the procedures specified in this subsection for  
26 any of the transactions specified herein. Any other procedure  
27 available under this Act may, at the electric utility's  
28 election, be used for any such transaction.

29 (h) During the mandatory transition period, the Commission  
30 shall not establish or use any rates of depreciation, which for  
31 purposes of this subsection shall include amortization, for any  
32 electric utility other than those established pursuant to  
33 subsection (c) of Section 5-104 of this Act or utilized  
34 pursuant to subsection (g) of this Section. Provided, however,

1 that in any proceeding to review an electric utility's rates  
2 for tariffed services pursuant to Section 9-201, 9-202, 9-250  
3 or 16-111(d) of this Act, the Commission may establish new  
4 rates of depreciation for the electric utility in the same  
5 manner provided in subsection (d) of Section 5-104 of this Act.  
6 An electric utility implementing an accelerated cost recovery  
7 method including accelerated depreciation, accelerated  
8 amortization or other capital recovery methods, or recording  
9 reductions to the original cost of its assets, pursuant to  
10 subsection (g) of this Section, shall file a statement with the  
11 Commission describing the accelerated cost recovery method to  
12 be implemented or the reduction in the original cost of its  
13 assets to be recorded. Upon the filing of such statement, the  
14 accelerated cost recovery method or the reduction in the  
15 original cost of assets shall be deemed to be approved by the  
16 Commission as though an order had been entered by the  
17 Commission.

18 (i) Subsequent to the mandatory transition period, the  
19 Commission, in any proceeding to establish rates and charges  
20 for tariffed services offered by an electric utility, shall  
21 consider only (1) the then current or projected revenues,  
22 costs, investments and cost of capital directly or indirectly  
23 associated with the provision of such tariffed services; (2)  
24 collection of transition charges in accordance with Sections  
25 16-102 and 16-108 of this Act; (3) recovery of any employee  
26 transition costs as described in Section 16-128 which the  
27 electric utility is continuing to incur, including recovery of  
28 any unamortized portion of such costs previously incurred or  
29 committed, with such costs to be equitably allocated among  
30 bundled services, delivery services, and contracts with  
31 alternative retail electric suppliers; and (4) recovery of the  
32 costs associated with the electric utility's compliance with  
33 decommissioning funding requirements; and shall not consider  
34 any other revenues, costs, investments or cost of capital of

1 either the electric utility or of any affiliate of the electric  
2 utility that are not associated with the provision of tariffed  
3 services. In setting rates for tariffed services, the  
4 Commission shall equitably allocate joint and common costs and  
5 investments between the electric utility's competitive and  
6 tariffed services. In determining the justness and  
7 reasonableness of the electric power and energy component of an  
8 electric utility's rates for tariffed services subsequent to  
9 the mandatory transition period and prior to the time that the  
10 provision of such electric power and energy is declared  
11 competitive, the Commission shall consider the extent to which  
12 the electric utility's tariffed rates for such component for  
13 each customer class exceed the market value determined pursuant  
14 to Section 16-112, and, if the electric power and energy  
15 component of such tariffed rate exceeds the market value by  
16 more than 10% for any customer class, may establish such  
17 electric power and energy component at a rate equal to the  
18 market value plus 10%. In any such case, the Commission may  
19 also elect to extend the provisions of Section 16-111(e) for  
20 any period in which the electric utility is collecting  
21 transition charges, using information applicable to such  
22 period.

23 (j) During the mandatory transition period, an electric  
24 utility may elect to transfer to a non-operating income account  
25 under the Commission's Uniform System of Accounts either or  
26 both of (i) an amount of unamortized investment tax credit that  
27 is in addition to the ratable amount which is credited to the  
28 electric utility's operating income account for the year in  
29 accordance with Section 46(f)(2) of the federal Internal  
30 Revenue Code of 1986, as in effect prior to P.L. 101-508, or  
31 (ii) "excess tax reserves", as that term is defined in Section  
32 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided  
33 that (A) the amount transferred may not exceed the amount of  
34 the electric utility's assets that were created pursuant to



1 Statement of Financial Accounting Standards No. 71 which the  
2 electric utility has written off during the mandatory  
3 transition period, and (B) the transfer shall not be effective  
4 until approved by the Internal Revenue Service. An electric  
5 utility electing to make such a transfer shall file a statement  
6 with the Commission stating the amount and timing of the  
7 transfer for which it intends to request approval of the  
8 Internal Revenue Service, along with a copy of its proposed  
9 request to the Internal Revenue Service for a ruling. The  
10 Commission shall issue an order within 14 days after the  
11 electric utility's filing approving, subject to receipt of  
12 approval from the Internal Revenue Service, the proposed  
13 transfer.

14 (k) If an electric utility is selling or transferring to a  
15 single buyer 5 or more generating plants located in this State  
16 with a total net dependable capacity of 5000 megawatts or more  
17 pursuant to subsection (g) of this Section and has obtained a  
18 sale price or consideration that exceeds 200% of the book value  
19 of such plants, the electric utility must provide to the  
20 Governor, the President of the Illinois Senate, the Minority  
21 Leader of the Illinois Senate, the Speaker of the Illinois  
22 House of Representatives, and the Minority Leader of the  
23 Illinois House of Representatives no later than 15 days after  
24 filing its notice under subsection (g) of this Section or 5  
25 days after the date on which this subsection (k) becomes law,  
26 whichever is later, a written commitment in which such electric  
27 utility agrees to expend \$2 billion outside the corporate  
28 limits of any municipality with 1,000,000 or more inhabitants  
29 within such electric utility's service area, over a 6-year  
30 period beginning with the calendar year in which the notice is  
31 filed, on projects, programs, and improvements within its  
32 service area relating to transmission and distribution  
33 including, without limitation, infrastructure expansion,  
34 repair and replacement, capital investments, operations and

1 maintenance, and vegetation management.

2 (Source: P.A. 91-50, eff. 6-30-99; 92-537, eff. 6-6-02; 92-690,  
3 eff. 7-18-02; revised 9-10-02.)

4 (220 ILCS 5/16-113)

5 Sec. 16-113. Declaration of service as a competitive  
6 service.

7 (a) An electric utility may, by petition, request the  
8 Commission to declare a tariffed service provided by the  
9 electric utility to be a competitive service. The electric  
10 utility shall give notice of its petition to the public in the  
11 same manner that public notice is provided for proposed general  
12 increases in rates for tariffed services, in accordance with  
13 rules and regulations prescribed by the Commission. The  
14 Commission shall hold a hearing and ~~on the petition if a~~  
15 ~~hearing is deemed necessary by the Commission. The Commission~~  
16 shall declare the class of tariffed service to be a competitive  
17 service ~~for some identifiable customer segment or group of~~  
18 ~~customers, or some clearly defined geographical area within the~~  
19 electric utility's service area, only after the electric  
20 utility demonstrates that at least 33% of the customers in the  
21 electric utility's service area that are eligible to take the  
22 class of tariffed service instead take service from alternative  
23 retail electric suppliers, as defined in Section 16-102, and  
24 that at least 3 alternative retail electric suppliers provide  
25 service that is comparable to the class of tariffed service to  
26 those customers in the utility's service area that do not take  
27 service from the electric utility; ~~if the service or a~~  
28 ~~reasonably equivalent substitute service is reasonably~~  
29 ~~available to the customer segment or group or in the defined~~  
30 ~~geographical area at a comparable price from one or more~~  
31 ~~providers other than the electric utility or an affiliate of~~  
32 ~~the electric utility, and the electric utility has lost or~~  
33 ~~there is a reasonable likelihood that the electric utility will~~

1 ~~lose business for the service to the other provider or~~  
2 ~~providers,~~ provided, that the Commission may not declare the  
3 provision of electric power and energy to be competitive  
4 pursuant to this subsection with respect to (i) any retail  
5 customer or group of retail customers that is not eligible  
6 pursuant to Section 16-104 to take delivery services provided  
7 by the electric utility and (ii) any residential and small  
8 commercial retail customers prior to the last date on which  
9 such customers are required to pay transition charges. In  
10 determining whether to grant or deny a petition to declare the  
11 provision of electric power and energy competitive, the  
12 Commission shall consider, in applying the above criteria,  
13 whether there is adequate transmission capacity into the  
14 service area of the petitioning electric utility to make  
15 electric power and energy reasonably available to the customer  
16 segment or group or in the defined geographical area from one  
17 or more providers other than the electric utility or an  
18 affiliate of the electric utility, in accordance with this  
19 subsection. The Commission shall make its determination and  
20 issue its final order declaring or refusing to declare the  
21 service to be a competitive service within 180 ~~120~~ days  
22 following the date that the petition is filed, ~~or otherwise the~~  
23 ~~petition shall be deemed to be granted; provided, that if the~~  
24 ~~petition is deemed to be granted by operation of law, the~~  
25 ~~Commission shall not thereby be precluded from finding and~~  
26 ~~ordering, in a subsequent proceeding initiated by the~~  
27 ~~Commission, and after notice and hearing, that the service is~~  
28 ~~not competitive based on the criteria set forth in this~~  
29 ~~subsection.~~

30 (b) Any customer except a customer identified in subsection  
31 (c) of Section 16-103 who is taking a tariffed service that is  
32 declared to be a competitive service pursuant to subsection (a)  
33 of this Section shall be entitled to continue to take the  
34 service from the electric utility on a tariffed basis for a

1 period of 3 years following the date that the service is  
2 declared competitive, or such other period as is stated in the  
3 electric utility's tariff pursuant to Section 16-110. This  
4 subsection shall not require the electric utility to offer or  
5 provide on a tariffed basis any service to any customer (except  
6 those customers identified in subsection (c) of Section 16-103)  
7 that was not taking such service on a tariffed basis on the  
8 date the service was declared to be competitive.

9 (c) If the Commission denies a petition to declare a  
10 service to be a competitive service, or determines in a  
11 separate proceeding that a service is not competitive based on  
12 the criteria set forth in subsection (a), the electric utility  
13 may file a new petition no earlier than 6 months following the  
14 date of the Commission's order, requesting, on the basis of  
15 additional or different facts and circumstances, that the  
16 service be declared to be a competitive service.

17 (d) The Commission shall not deny a petition to declare a  
18 service to be a competitive service, and shall not find that a  
19 service is not a competitive service, on the grounds that it  
20 has previously denied the petition of another electric utility  
21 to declare the same or a similar service to be a competitive  
22 service or has previously determined that the same or a similar  
23 service provided by another electric utility is not a  
24 competitive service.

25 (e) An electric utility may declare a service, other than  
26 delivery services or the provision of electric power or energy,  
27 to be competitive by filing with the Commission at least 14  
28 days prior to the date on which the service is to become  
29 competitive a notice describing the service that is being  
30 declared competitive and the date on which it will become  
31 competitive; provided, that any customer who is taking a  
32 tariffed service that is declared to be a competitive service  
33 pursuant to this subsection (e) shall be entitled to continue  
34 to take the service from the electric utility on a tariffed

1 basis until the electric utility files, and the Commission  
2 grants, a petition to declare the service competitive in  
3 accordance with subsection (a) of this Section. The Commission  
4 shall be authorized to find and order, after notice and hearing  
5 in a subsequent proceeding initiated by the Commission, that  
6 any service declared to be competitive pursuant to this  
7 subsection (e) is not competitive in accordance with the  
8 criteria set forth in subsection (a) of this Section.  
9 (Source: P.A. 90-561, eff. 12-16-97.)

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law."