

HB0778



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0778

Introduced 2/1/2005, by Rep. Patrick J Verschoore

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-111

Amends the Public Utilities Act. Makes a technical change in a Section concerning rates and restructuring transactions during the mandatory transition period.

LRB094 08524 MKM 38731 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Section 16-111 as follows:

6 (220 ILCS 5/16-111)

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

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

28 (1) approving the application of an electric utility to
29 implement an alternative to rate of return regulation or a
30 regulatory mechanism that rewards or penalizes the
31 electric utility through adjustment of rates based on
32 utility performance, pursuant to Section 9-244;

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

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

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

24 After December 31, 2004, the provisions of this subsection
25 (a) shall not apply to an electric utility whose average
26 residential retail rate was less than or equal to 90% of the
27 average residential retail rate for the "Midwest Utilities", as
28 that term is defined in subsection (b) of this Section, based
29 on data reported on Form 1 to the Federal Energy Regulatory
30 Commission for calendar year 1995, and which served between
31 150,000 and 250,000 retail customers in this State on January
32 1, 1995 unless the electric utility or its holding company has
33 been acquired by or merged with an affiliate of another
34 electric utility subsequent to January 1, 2002. This exemption
35 shall be limited to this subsection (a) and shall not extend to
36 any other provisions of this Act.

1 (b) Notwithstanding the provisions of subsection (a), each
2 Illinois electric utility serving more than 12,500 customers in
3 Illinois shall file tariffs (i) reducing, effective August 1,
4 1998, each component of its base rates to residential retail
5 customers by 15% from the base rates in effect immediately
6 prior to January 1, 1998 and (ii) if the public utility
7 provides electric service to (A) more than 500,000 customers
8 but less than 1,000,000 customers in this State on January 1,
9 1999, reducing, effective May 1, 2002, each component of its
10 base rates to residential retail customers by an additional 5%
11 from the base rates in effect immediately prior to January 1,
12 1998, or (B) at least 1,000,000 customers in this State on
13 January 1, 1999, reducing, effective October 1, 2001, each
14 component of its base rates to residential retail customers by
15 an additional 5% from the base rates in effect immediately
16 prior to January 1, 1998. Provided, however, that (A) if an
17 electric utility's average residential retail rate is less than
18 or equal to the average residential retail rate for a group of
19 Midwest Utilities (consisting of all investor-owned electric
20 utilities with annual system peaks in excess of 1000 megawatts
21 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,
22 Missouri, Ohio, and Wisconsin), based on data reported on Form
23 1 to the Federal Energy Regulatory Commission for calendar year
24 1995, then it shall only be required to file tariffs (i)
25 reducing, effective August 1, 1998, each component of its base
26 rates to residential retail customers by 5% from the base rates
27 in effect immediately prior to January 1, 1998, (ii) reducing,
28 effective October 1, 2000, each component of its base rates to
29 residential retail customers by the lesser of 5% of the base
30 rates in effect immediately prior to January 1, 1998 or the
31 percentage by which the electric utility's average residential
32 retail rate exceeds the average residential retail rate of the
33 Midwest Utilities, based on data reported on Form 1 to the
34 Federal Energy Regulatory Commission for calendar year 1999,
35 and (iii) reducing, effective October 1, 2002, each component
36 of its base rates to residential retail customers by an

1 additional amount equal to the lesser of 5% of the base rates
2 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 2001;
7 and (B) if the average residential retail rate of an electric
8 utility serving between 150,000 and 250,000 retail customers in
9 this State on January 1, 1995 is less than or equal to 90% of
10 the average residential retail rate for the Midwest Utilities,
11 based on data reported on Form 1 to the Federal Energy
12 Regulatory Commission for calendar year 1995, then it shall
13 only be required to file tariffs (i) reducing, effective August
14 1, 1998, each component of its base rates to residential retail
15 customers by 2% from the base rates in effect immediately prior
16 to January 1, 1998; (ii) reducing, effective October 1, 2000,
17 each component of its base rates to residential retail
18 customers by 2% from the base rate in effect immediately prior
19 to January 1, 1998; and (iii) reducing, effective October 1,
20 2002, each component of its base rates to residential retail
21 customers by 1% from the base rates in effect immediately prior
22 to January 1, 1998. Provided, further, that any electric
23 utility for which a decrease in base rates has been or is
24 placed into effect between October 1, 1996 and the dates
25 specified in the preceding sentences of this subsection, other
26 than pursuant to the requirements of this subsection, shall be
27 entitled to reduce the amount of any reduction or reductions in
28 its base rates required by this subsection by the amount of
29 such other decrease. The tariffs required under this subsection
30 shall be filed 45 days in advance of the effective date.
31 Notwithstanding anything to the contrary in Section 9-220 of
32 this Act, no restatement of base rates in conjunction with the
33 elimination of a fuel adjustment clause under that Section
34 shall result in a lesser decrease in base rates than customers
35 would otherwise receive under this subsection had the electric
36 utility's fuel adjustment clause not been eliminated.

1 (c) Any utility reducing its base rates by 15% on August 1,
2 1998 pursuant to subsection (b) shall include the following
3 statement on its bills for residential customers from August 1
4 through December 31, 1998: "Effective August 1, 1998, your
5 rates have been reduced by 15% by the Electric Service Customer
6 Choice and Rate Relief Law of 1997 passed by the Illinois
7 General Assembly.". Any utility reducing its base rates by 5%
8 on August 1, 1998, pursuant to subsection (b) shall include the
9 following statement on its bills for residential customers from
10 August 1 through December 31, 1998: "Effective August 1, 1998,
11 your rates have been reduced by 5% by the Electric Service
12 Customer Choice and Rate Relief Law of 1997 passed by the
13 Illinois General Assembly."

14 Any utility reducing its base rates by 2% on August 1, 1998
15 pursuant to subsection (b) shall include the following
16 statement on its bills for residential customers from August 1
17 through December 31, 1998: "Effective August 1, 1998, your
18 rates have been reduced by 2% by the Electric Service Customer
19 Choice and Rate Relief Law of 1997 passed by the Illinois
20 General Assembly."

21 (d) During the mandatory transition period, but not before
22 January 1, 2000, and notwithstanding the provisions of
23 subsection (a), an electric utility may request an increase in
24 its base rates if the electric utility demonstrates that the
25 2-year average of its earned rate of return on common equity,
26 calculated as its net income applicable to common stock divided
27 by the average of its beginning and ending balances of common
28 equity using data reported in the electric utility's Form 1
29 report to the Federal Energy Regulatory Commission but adjusted
30 to remove the effects of accelerated depreciation or
31 amortization or other transition or mitigation measures
32 implemented by the electric utility pursuant to subsection (g)
33 of this Section and the effect of any refund paid pursuant to
34 subsection (e) of this Section, is below the 2-year average for
35 the same 2 years of the monthly average yields of 30-year U.S.
36 Treasury bonds published by the Board of Governors of the

1 Federal Reserve System in its weekly H.15 Statistical Release
2 or successor publication. The Commission shall review the
3 electric utility's request, and may review the justness and
4 reasonableness of all rates for tariffed services, in
5 accordance with the provisions of Article IX of this Act,
6 provided that the Commission shall consider any special or
7 negotiated adjustments to the revenue requirement agreed to
8 between the electric utility and the other parties to the
9 proceeding. In setting rates under this Section, the Commission
10 shall exclude the costs and revenues that are associated with
11 competitive services and any billing or pricing experiments
12 conducted under Section 16-106.

13 (e) For the purposes of this subsection (e) all
14 calculations and comparisons shall be performed for the
15 Illinois operations of multijurisdictional utilities. During
16 the mandatory transition period, notwithstanding the
17 provisions of subsection (a), if the 2-year average of an
18 electric utility's earned rate of return on common equity,
19 calculated as its net income applicable to common stock divided
20 by the average of its beginning and ending balances of common
21 equity using data reported in the electric utility's Form 1
22 report to the Federal Energy Regulatory Commission but adjusted
23 to remove the effect of any refund paid under this subsection
24 (e), and further adjusted to include the annual amortization of
25 any difference between the consideration received by an
26 affiliated interest of the electric utility in the sale of an
27 asset which had been sold or transferred by the electric
28 utility to the affiliated interest subsequent to the effective
29 date of this amendatory Act of 1997 and the consideration for
30 which such asset had been sold or transferred to the affiliated
31 interest, with such difference to be amortized ratably from the
32 date of the sale by the affiliated interest to December 31,
33 2006, exceeds the 2-year average of the Index for the same 2
34 years by 1.5 or more percentage points, the electric utility
35 shall make refunds to customers beginning the first billing day
36 of April in the following year in the manner described in

1 paragraph (3) of this subsection. For purposes of this
2 subsection (e), the "Index" shall be the sum of (A) the average
3 for the 12 months ended September 30 of the monthly average
4 yields of 30-year U.S. Treasury bonds published by the Board of
5 Governors of the Federal Reserve System in its weekly H.15
6 Statistical Release or successor publication for each year 1998
7 through 2006, and (B) (i) 4.00 percentage points for each of
8 the 12-month periods ending September 30, 1998 through
9 September 30, 1999 or 8.00 percentage points if the electric
10 utility's average residential retail rate is less than or equal
11 to 90% of the average residential retail rate for the "Midwest
12 Utilities", as that term is defined in subsection (b) of this
13 Section, based on data reported on Form 1 to the Federal Energy
14 Regulatory Commission for calendar year 1995, and the electric
15 utility served between 150,000 and 250,000 retail customers on
16 January 1, 1995, (ii) 7.00 percentage points for each of the
17 12-month periods ending September 30, 2000 through September
18 30, 2006 if the electric utility was providing service to at
19 least 1,000,000 customers in this State on January 1, 1999, or
20 9.00 percentage points if the electric utility's average
21 residential retail rate is less than or equal to 90% of the
22 average residential retail rate for the "Midwest Utilities", as
23 that term is defined in subsection (b) of this Section, based
24 on data reported on Form 1 to the Federal Energy Regulatory
25 Commission for calendar year 1995 and the electric utility
26 served between 150,000 and 250,000 retail customers in this
27 State on January 1, 1995, (iii) 11.00 percentage points for
28 each of the 12-month periods ending September 30, 2000 through
29 September 30, 2006, but only if the electric utility's average
30 residential retail rate is less than or equal to 90% of the
31 average residential retail rate for the "Midwest Utilities", as
32 that term is defined in subsection (b) of this Section, based
33 on data reported on Form 1 to the Federal Energy Regulatory
34 Commission for calendar year 1995, the electric utility served
35 between 150,000 and 250,000 retail customers in this State on
36 January 1, 1995, and the electric utility offers delivery

1 services on or before June 1, 2000 to retail customers whose
2 annual electric energy use comprises 33% of the kilowatt hour
3 sales to that group of retail customers that are classified
4 under Division D, Groups 20 through 39 of the Standard
5 Industrial Classifications set forth in the Standard
6 Industrial Classification Manual published by the United
7 States Office of Management and Budget, excluding the kilowatt
8 hour sales to those customers that are eligible for delivery
9 services pursuant to Section 16-104(a)(1)(i), and offers
10 delivery services to its remaining retail customers classified
11 under Division D, Groups 20 through 39 on or before October 1,
12 2000, and, provided further, that the electric utility commits
13 not to petition pursuant to Section 16-108(f) for entry of an
14 order by the Commission authorizing the electric utility to
15 implement transition charges for an additional period after
16 December 31, 2006, or (iv) 5.00 percentage points for each of
17 the 12-month periods ending September 30, 2000 through
18 September 30, 2006 for all other electric utilities or 7.00
19 percentage points for such utilities for each of the 12-month
20 periods ending September 30, 2000 through September 30, 2006
21 for any such utility that commits not to petition pursuant to
22 Section 16-108(f) for entry of an order by the Commission
23 authorizing the electric utility to implement transition
24 charges for an additional period after December 31, 2006 or
25 11.00 percentage points for each of the 12-month periods ending
26 September 30, 2005 and September 30, 2006 for each electric
27 utility providing service to fewer than 6,500, or between
28 75,000 and 150,000, electric retail customers in this State on
29 January 1, 1995 if such utility commits not to petition
30 pursuant to Section 16-108(f) for entry of an order by the
31 Commission authorizing the electric utility to implement
32 transition charges for an additional period after December 31,
33 2006.

34 (1) For purposes of this subsection (e), "excess
35 earnings" means the difference between (A) the 2-year
36 average of the electric utility's earned rate of return on

1 common equity, less (B) the 2-year average of the sum of
2 (i) the Index applicable to each of the 2 years and (ii)
3 1.5 percentage points; provided, that "excess earnings"
4 shall never be less than zero.

5 (2) On or before March 31 of each year 2000 through
6 2007 each electric utility shall file a report with the
7 Commission showing its earned rate of return on common
8 equity, calculated in accordance with this subsection, for
9 the preceding calendar year and the average for the
10 preceding 2 calendar years.

11 (3) If an electric utility has excess earnings,
12 determined in accordance with paragraphs (1) and (2) of
13 this subsection, the refunds which the electric utility
14 shall pay to its customers beginning the first billing day
15 of April in the following year shall be calculated and
16 applied as follows:

17 (i) The electric utility's excess earnings shall
18 be multiplied by the average of the beginning and
19 ending balances of the electric utility's common
20 equity for the 2-year period in which excess earnings
21 occurred.

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

26 (iii) The result of the calculation in (ii) shall
27 be divided by the sum of the electric utility's
28 projected total kilowatt-hour sales to retail
29 customers plus projected kilowatt-hours to be
30 delivered to delivery services customers over a one
31 year period beginning with the first billing date in
32 April in the succeeding year to determine a cents per
33 kilowatt-hour refund factor.

34 (iv) The cents per kilowatt-hour refund factor
35 calculated in (iii) shall be credited to the electric
36 utility's customers by applying the factor on the

1 customer's monthly bills to each kilowatt-hour sold or
2 delivered until the total amount calculated in (ii) has
3 been paid to customers.

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

9 (g) During the mandatory transition period, an electric
10 utility may, without obtaining any approval of the Commission
11 other than that provided for in this subsection and
12 notwithstanding any other provision of this Act or any rule or
13 regulation of the Commission that would require such approval:

14 (1) implement a reorganization, other than a merger of
15 2 or more public utilities as defined in Section 3-105 or
16 their holding companies;

17 (2) retire generating plants from service;

18 (3) sell, assign, lease or otherwise transfer assets to
19 an affiliated or unaffiliated entity and as part of such
20 transaction enter into service agreements, power purchase
21 agreements, or other agreements with the transferee;
22 provided, however, that the prices, terms and conditions of
23 any power purchase agreement must be approved or allowed
24 into effect by the Federal Energy Regulatory Commission; or

25 (4) use any accelerated cost recovery method including
26 accelerated depreciation, accelerated amortization or
27 other capital recovery methods, or record reductions to the
28 original cost of its assets.

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

1 (i) a complete statement of the entries that the
2 electric utility will make on its books and records of
3 account to implement the proposed reorganization or
4 transaction together with a certification from an
5 independent certified public accountant that such
6 entries are in accord with generally accepted
7 accounting principles and, if the Commission has
8 previously approved guidelines for cost allocations
9 between the utility and its affiliates, a
10 certification from the chief accounting officer of the
11 utility that such entries are in accord with those cost
12 allocation guidelines;

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

17 (iii) a list of all federal approvals or approvals
18 required from departments and agencies of this State,
19 other than the Commission, that the electric utility
20 has or will obtain before implementing the
21 reorganization or transaction;

22 (iv) an irrevocable commitment by the electric
23 utility that it will not, as a result of the
24 transaction, impose any stranded cost charges that it
25 might otherwise be allowed to charge retail customers
26 under federal law or increase the transition charges
27 that it is otherwise entitled to collect under this
28 Article XVI; and

29 (v) if the electric utility proposes to sell,
30 assign, lease or otherwise transfer a generating plant
31 that brings the amount of net dependable generating
32 capacity transferred pursuant to this subsection to an
33 amount equal to or greater than 15% of the electric
34 utility's net dependable capacity as of the effective
35 date of this amendatory Act of 1997, and enters into a
36 power purchase agreement with the entity to which such

1 generating plant is sold, assigned, leased, or
2 otherwise transferred, the electric utility also
3 agrees, if its fuel adjustment clause has not already
4 been eliminated, to eliminate its fuel adjustment
5 clause in accordance with subsection (b) of Section
6 9-220 for a period of time equal to the length of any
7 such power purchase agreement or successor agreement,
8 or until January 1, 2005, whichever is longer; if the
9 capacity of the generating plant so transferred and
10 related power purchase agreement does not result in the
11 elimination of the fuel adjustment clause under this
12 subsection, and the fuel adjustment clause has not
13 already been eliminated, the electric utility shall
14 agree that the costs associated with the transferred
15 plant that are included in the calculation of the rate
16 per kilowatt-hour to be applied pursuant to the
17 electric utility's fuel adjustment clause during such
18 period shall not exceed the per kilowatt-hour cost
19 associated with such generating plant included in the
20 electric utility's fuel adjustment clause during the
21 full calendar year preceding the transfer, with such
22 limit to be adjusted each year thereafter by the Gross
23 Domestic Product Implicit Price Deflator.

24 (vi) In addition, if the electric utility proposes
25 to sell, assign, or lease, (A) either (1) an amount of
26 generating plant that brings the amount of net
27 dependable generating capacity transferred pursuant to
28 this subsection to an amount equal to or greater than
29 15% of its net dependable capacity on the effective
30 date of this amendatory Act of 1997, or (2) one or more
31 generating plants with a total net dependable capacity
32 of 1100 megawatts, or (B) transmission and
33 distribution facilities that either (1) bring the
34 amount of transmission and distribution facilities
35 transferred pursuant to this subsection to an amount
36 equal to or greater than 15% of the electric utility's

1 total depreciated original cost investment in such
2 facilities, or (2) represent an investment of
3 \$25,000,000 in terms of total depreciated original
4 cost, the electric utility shall provide, in addition
5 to the information listed in subparagraphs (i) through
6 (v), the following information: (A) a description of
7 how the electric utility will meet its service
8 obligations under this Act in a safe and reliable
9 manner and (B) the electric utility's projected earned
10 rate of return on common equity, calculated in
11 accordance with subsection (d) of this Section, for
12 each year from the date of the notice through December
13 31, 2006 both with and without the proposed
14 transaction. If the Commission has not issued an order
15 initiating a hearing on the proposed transaction
16 within 30 days after the date the electric utility's
17 notice is filed, the transaction shall be deemed
18 approved. The Commission may, after notice and
19 hearing, prohibit the proposed transaction if it makes
20 either or both of the following findings: (1) that the
21 proposed transaction will render the electric utility
22 unable to provide its tariffed services in a safe and
23 reliable manner, or (2) that there is a strong
24 likelihood that consummation of the proposed
25 transaction will result in the electric utility being
26 entitled to request an increase in its base rates
27 during the mandatory transition period pursuant to
28 subsection (d) of this Section. Any hearing initiated
29 by the Commission into the proposed transaction shall
30 be completed, and the Commission's final order
31 approving or prohibiting the proposed transaction
32 shall be entered, within 90 days after the date the
33 electric utility's notice was filed. Provided,
34 however, that a sale, assignment, or lease of
35 transmission facilities to an independent system
36 operator that meets the requirements of Section 16-126

1 shall not be subject to Commission approval under this
2 Section.

3 In any proceeding conducted by the Commission
4 pursuant to this subparagraph (vi), intervention shall
5 be limited to parties with a direct interest in the
6 transaction which is the subject of the hearing and any
7 statutory consumer protection agency as defined in
8 subsection (d) of Section 9-102.1. Notwithstanding the
9 provisions of Section 10-113 of this Act, any
10 application seeking rehearing of an order issued under
11 this subparagraph (vi), whether filed by the electric
12 utility or by an intervening party, shall be filed
13 within 10 days after service of the order.

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

35 (h) During the mandatory transition period, the Commission
36 shall not establish or use any rates of depreciation, which for

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

22 (i) Subsequent to the mandatory transition period, the
23 Commission, in any proceeding to establish rates and charges
24 for tariffed services offered by an electric utility, shall
25 consider only (1) the then current or projected revenues,
26 costs, investments and cost of capital directly or indirectly
27 associated with the provision of such tariffed services; (2)
28 collection of transition charges in accordance with Sections
29 16-102 and 16-108 of this Act; (3) recovery of any employee
30 transition costs as described in Section 16-128 which the
31 electric utility is continuing to incur, including recovery of
32 any unamortized portion of such costs previously incurred or
33 committed, with such costs to be equitably allocated among
34 bundled services, delivery services, and contracts with
35 alternative retail electric suppliers; and (4) recovery of the
36 costs associated with the electric utility's compliance with

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

25 (j) During the mandatory transition period, an electric
26 utility may elect to transfer to a non-operating income account
27 under the Commission's Uniform System of Accounts either or
28 both of (i) an amount of unamortized investment tax credit that
29 is in addition to the ratable amount which is credited to the
30 electric utility's operating income account for the year in
31 accordance with Section 46(f)(2) of the federal Internal
32 Revenue Code of 1986, as in effect prior to P.L. 101-508, or
33 (ii) "excess tax reserves", as that term is defined in Section
34 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided
35 that (A) the amount transferred may not exceed the amount of
36 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
35 maintenance, and vegetation management.

36 (Source: P.A. 91-50, eff. 6-30-99; 92-537, eff. 6-6-02; 92-690,

1 eff. 7-18-02; revised 9-10-02.)