



Rep. David R. Leitch

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1 AMENDMENT TO HOUSE BILL 3246

2 AMENDMENT NO. _____. Amend House Bill 3246 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, 16-108, 16-111, 16-112, 16-120, and 16-130 as
6 follows:

7 (220 ILCS 5/16-102)

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

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

1 Section 17-100 to the extent that the electric cooperative or
2 municipal system is serving retail customers within any area in
3 which it is or would be entitled to provide service under the
4 law in effect immediately prior to the effective date of this
5 amendatory Act of 1997, (iii) a public utility that is owned
6 and operated by any public institution of higher education of
7 this State, or a public utility that is owned by such public
8 institution of higher education and operated by any of its
9 lessees or operating agents, within any area in which it is or
10 would be entitled to provide service under the law in effect
11 immediately prior to the effective date of this amendatory Act
12 of 1997, (iv) a retail customer to the extent that customer
13 obtains its electric power and energy from that customer's own
14 cogeneration or self-generation facilities, (v) an entity that
15 owns, operates, sells, or arranges for the installation of a
16 customer's own cogeneration or self-generation facilities, but
17 only to the extent the entity is engaged in owning, selling or
18 arranging for the installation of such facility, or operating
19 the facility on behalf of such customer, provided however that
20 any such third party owner or operator of a facility built
21 after January 1, 1999, complies with the labor provisions of
22 Section 16-128(a) as though such third party were an
23 alternative retail electric supplier, or (vi) an industrial or
24 manufacturing customer that owns its own distribution
25 facilities, to the extent that the customer provides service
26 from that distribution system to a third-party contractor
27 located on the customer's premises that is integrally and
28 predominantly engaged in the customer's industrial or
29 manufacturing process; provided, that if the industrial or
30 manufacturing customer has elected delivery services, the
31 customer shall pay transition charges applicable to the
32 electric power and energy consumed by the third-party
33 contractor unless such charges are otherwise paid by the third
34 party contractor, which shall be calculated based on the usage

1 of, and the base rates or the contract rates applicable to, the
2 third-party contractor in accordance with Section 16-102.

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

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

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

1 negotiated rate contracts for electric utility services that
2 were entered into between an electric utility and a retail
3 customer prior to the effective date of this amendatory Act of
4 1997 and filed with the Commission.

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

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

16 "Mandatory transition period" means the period from the
17 effective date of this amendatory Act of 1997 through January
18 1, 2009 ~~2007~~.

19 "Municipal system" shall have the meaning set forth in
20 Section 17-100.

21 "Real-time pricing" means charges for delivered electric
22 power and energy that vary on an hour-to-hour basis for
23 nonresidential retail customers and that vary on a periodic
24 basis during the day for residential retail customers.

25 "Retail customer" means a single entity using electric
26 power or energy at a single premises and that (A) either (i) is
27 receiving or is eligible to receive tariffed services from an
28 electric utility, or (ii) that is served by a municipal system
29 or electric cooperative within any area in which the municipal
30 system or electric cooperative is or would be entitled to
31 provide service under the law in effect immediately prior to
32 the effective date of this amendatory Act of 1997, or (B) an
33 entity which on the effective date of this Act was receiving
34 electric service from a public utility and (i) was engaged in

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

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

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

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

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

28 (1) the amount of revenue that an electric utility
29 would receive from the retail customer or customers if it
30 were serving such customers' electric power and energy
31 requirements as a tariffed service based on (A) all of the
32 customers' actual usage during the 3 years ending 90 days
33 prior to the date on which such customers were first
34 eligible for delivery services pursuant to Section 16-104,

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

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

30 (3) less the market value for the electric power and
31 energy that the electric utility would have used to supply
32 all of such customers' electric power and energy
33 requirements, as a tariffed service, based on the usage
34 identified in paragraph (1), with such market value

1 determined in accordance with Section 16-112 of this Act;

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

8 (A) for nonresidential retail customers, an amount
9 equal to the greater of (i) 0.5 cents per kilowatt-hour
10 during the period October 1, 1999 through December 31,
11 2004, 0.6 cents per kilowatt-hour in calendar year
12 2005, and 0.9 cents per kilowatt-hour in calendar year
13 2008 ~~2006~~, multiplied in each year by the usage
14 identified in paragraph (1), or (ii) an amount equal to
15 the following percentages of the amount produced by
16 applying the applicable base rates (adjusted as
17 described in subparagraph (1)(B)) or contract rate to
18 the usage identified in paragraph (1): 8% for the
19 period October 1, 1999 through December 31, 2002, 10%
20 in calendar years 2003 and 2004, 11% in calendar year
21 2005 and 12% in calendar year 2008 ~~2006~~; and

22 (B) for residential retail customers, an amount
23 equal to the following percentages of the amount
24 produced by applying the base rates in effect on
25 October 1, 1996 (adjusted as described in subparagraph
26 (1)(B)) to the usage identified in paragraph (1): (i)
27 6% from May 1, 2002 through December 31, 2002, (ii) 7%
28 in calendar years 2003 and 2004, (iii) 8% in calendar
29 year 2005, and (iv) 10% in calendar year 2008 ~~2006~~;

30 (5) divided by the usage of such customers identified
31 in paragraph (1),
32 provided that the transition charge shall never be less than
33 zero.

34 "Unbundled service" means a component or constituent part

1 of a tariffed service which the electric utility subsequently
2 offers separately to its customers.

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

4 (220 ILCS 5/16-108)

5 Sec. 16-108. Recovery of costs associated with the
6 provision of delivery services.

7 (a) An electric utility shall file a delivery services
8 tariff with the Commission at least 210 days prior to the date
9 that it is required to begin offering such services pursuant to
10 this Act. An electric utility shall provide the components of
11 delivery services that are subject to the jurisdiction of the
12 Federal Energy Regulatory Commission at the same prices, terms
13 and conditions set forth in its applicable tariff as approved
14 or allowed into effect by that Commission. The Commission shall
15 otherwise have the authority pursuant to Article IX to review,
16 approve, and modify the prices, terms and conditions of those
17 components of delivery services not subject to the jurisdiction
18 of the Federal Energy Regulatory Commission, including the
19 authority to determine the extent to which such delivery
20 services should be offered on an unbundled basis. In making any
21 such determination the Commission shall consider, at a minimum,
22 the effect of additional unbundling on (i) the objective of
23 just and reasonable rates, (ii) electric utility employees, and
24 (iii) the development of competitive markets for electric
25 energy services in Illinois.

26 (b) The Commission shall enter an order approving, or
27 approving as modified, the delivery services tariff no later
28 than 30 days prior to the date on which the electric utility
29 must commence offering such services. The Commission may
30 subsequently modify such tariff pursuant to this Act.

31 (c) The electric utility's tariffs shall define the classes
32 of its customers for purposes of delivery services charges.
33 Delivery services shall be priced and made available to all

1 retail customers electing delivery services in each such class
2 on a nondiscriminatory basis regardless of whether the retail
3 customer chooses the electric utility, an affiliate of the
4 electric utility, or another entity as its supplier of electric
5 power and energy. Charges for delivery services shall be cost
6 based, and shall allow the electric utility to recover the
7 costs of providing delivery services through its charges to its
8 delivery service customers that use the facilities and services
9 associated with such costs. Such costs shall include the costs
10 of owning, operating and maintaining transmission and
11 distribution facilities. The Commission shall also be
12 authorized to consider whether, and if so to what extent, the
13 following costs are appropriately included in the electric
14 utility's delivery services rates: (i) the costs of that
15 portion of generation facilities used for the production and
16 absorption of reactive power in order that retail customers
17 located in the electric utility's service area can receive
18 electric power and energy from suppliers other than the
19 electric utility, and (ii) the costs associated with the use
20 and redispatch of generation facilities to mitigate
21 constraints on the transmission or distribution system in order
22 that retail customers located in the electric utility's service
23 area can receive electric power and energy from suppliers other
24 than the electric utility. Nothing in this subsection shall be
25 construed as directing the Commission to allocate any of the
26 costs described in (i) or (ii) that are found to be
27 appropriately included in the electric utility's delivery
28 services rates to any particular customer group or geographic
29 area in setting delivery services rates.

30 (d) The Commission shall establish charges, terms and
31 conditions for delivery services that are just and reasonable
32 and shall take into account customer impacts when establishing
33 such charges. In establishing charges, terms and conditions for
34 delivery services, the Commission shall take into account

1 voltage level differences. A retail customer shall have the
2 option to request to purchase electric service at any delivery
3 service voltage reasonably and technically feasible from the
4 electric facilities serving that customer's premises provided
5 that there are no significant adverse impacts upon system
6 reliability or system efficiency. A retail customer shall also
7 have the option to request to purchase electric service at any
8 point of delivery that is reasonably and technically feasible
9 provided that there are no significant adverse impacts on
10 system reliability or efficiency. Such requests shall not be
11 unreasonably denied.

12 (e) Electric utilities shall recover the costs of
13 installing, operating or maintaining facilities for the
14 particular benefit of one or more delivery services customers,
15 including without limitation any costs incurred in complying
16 with a customer's request to be served at a different voltage
17 level, directly from the retail customer or customers for whose
18 benefit the costs were incurred, to the extent such costs are
19 not recovered through the charges referred to in subsections
20 (c) and (d) of this Section.

21 (f) An electric utility shall be entitled but not required
22 to implement transition charges in conjunction with the
23 offering of delivery services pursuant to Section 16-104. If an
24 electric utility implements transition charges, it shall
25 implement such charges for all delivery services customers and
26 for all customers described in subsection (h), but shall not
27 implement transition charges for power and energy that a retail
28 customer takes from cogeneration or self-generation facilities
29 located on that retail customer's premises, if such facilities
30 meet the following criteria:

31 (i) the cogeneration or self-generation facilities
32 serve a single retail customer and are located on that
33 retail customer's premises (for purposes of this
34 subparagraph and subparagraph (ii), an industrial or

1 manufacturing retail customer and a third party contractor
2 that is served by such industrial or manufacturing customer
3 through such retail customer's own electrical distribution
4 facilities under the circumstances described in subsection
5 (vi) of the definition of "alternative retail electric
6 supplier" set forth in Section 16-102, shall be considered
7 a single retail customer);

8 (ii) the cogeneration or self-generation facilities
9 either (A) are sized pursuant to generally accepted
10 engineering standards for the retail customer's electrical
11 load at that premises (taking into account standby or other
12 reliability considerations related to that retail
13 customer's operations at that site) or (B) if the facility
14 is a cogeneration facility located on the retail customer's
15 premises, the retail customer is the thermal host for that
16 facility and the facility has been designed to meet that
17 retail customer's thermal energy requirements resulting in
18 electrical output beyond that retail customer's electrical
19 demand at that premises, comply with the operating and
20 efficiency standards applicable to "qualifying facilities"
21 specified in title 18 Code of Federal Regulations Section
22 292.205 as in effect on the effective date of this
23 amendatory Act of 1999;

24 (iii) the retail customer on whose premises the
25 facilities are located either has an exclusive right to
26 receive, and corresponding obligation to pay for, all of
27 the electrical capacity of the facility, or in the case of
28 a cogeneration facility that has been designed to meet the
29 retail customer's thermal energy requirements at that
30 premises, an identified amount of the electrical capacity
31 of the facility, over a minimum 5-year period; and

32 (iv) if the cogeneration facility is sized for the
33 retail customer's thermal load at that premises but exceeds
34 the electrical load, any sales of excess power or energy

1 are made only at wholesale, are subject to the jurisdiction
2 of the Federal Energy Regulatory Commission, and are not
3 for the purpose of circumventing the provisions of this
4 subsection (f).

5 If a generation facility located at a retail customer's
6 premises does not meet the above criteria, an electric utility
7 implementing transition charges shall implement a transition
8 charge until December 31, 2008 ~~2006~~ for any power and energy
9 taken by such retail customer from such facility as if such
10 power and energy had been delivered by the electric utility.
11 Provided, however, that an industrial retail customer that is
12 taking power from a generation facility that does not meet the
13 above criteria but that is located on such customer's premises
14 will not be subject to a transition charge for the power and
15 energy taken by such retail customer from such generation
16 facility if the facility does not serve any other retail
17 customer and either was installed on behalf of the customer and
18 for its own use prior to January 1, 1997, or is both
19 predominantly fueled by byproducts of such customer's
20 manufacturing process at such premises and sells or offers an
21 average of 300 megawatts or more of electricity produced from
22 such generation facility into the wholesale market. Such
23 charges shall be calculated as provided in Section 16-102, and
24 shall be collected on each kilowatt-hour delivered under a
25 delivery services tariff to a retail customer from the date the
26 customer first takes delivery services until December 31, 2008
27 ~~2006~~ except as provided in subsection (h) of this Section.
28 Provided, however, that an electric utility, other than an
29 electric utility providing service to at least 1,000,000
30 customers in this State on January 1, 1999, shall be entitled
31 to petition for entry of an order by the Commission authorizing
32 the electric utility to implement transition charges for an
33 additional period ending no later than December 31, 2010 ~~2008~~.
34 The electric utility shall file its petition with supporting

1 evidence no earlier than 16 months, and no later than 12
2 months, prior to December 31, 2008 ~~2006~~. The Commission shall
3 hold a hearing on the electric utility's petition and shall
4 enter its order no later than 8 months after the petition is
5 filed. The Commission shall determine whether and to what
6 extent the electric utility shall be authorized to implement
7 transition charges for an additional period. The Commission may
8 authorize the electric utility to implement transition charges
9 for some or all of the additional period, and shall determine
10 the mitigation factors to be used in implementing such
11 transition charges; provided, that the Commission shall not
12 authorize mitigation factors less than 110% of those in effect
13 during the 12 months ended December 31, 2008 ~~2006~~. In making
14 its determination, the Commission shall consider the following
15 factors: the necessity to implement transition charges for an
16 additional period in order to maintain the financial integrity
17 of the electric utility; the prudence of the electric utility's
18 actions in reducing its costs since the effective date of this
19 amendatory Act of 1997; the ability of the electric utility to
20 provide safe, adequate and reliable service to retail customers
21 in its service area; and the impact on competition of allowing
22 the electric utility to implement transition charges for the
23 additional period.

24 (g) The electric utility shall file tariffs that establish
25 the transition charges to be paid by each class of customers to
26 the electric utility in conjunction with the provision of
27 delivery services. The electric utility's tariffs shall define
28 the classes of its customers for purposes of calculating
29 transition charges. The electric utility's tariffs shall
30 provide for the calculation of transition charges on a
31 customer-specific basis for any retail customer whose average
32 monthly maximum electrical demand on the electric utility's
33 system during the 6 months with the customer's highest monthly
34 maximum electrical demands equals or exceeds 3.0 megawatts for

1 electric utilities having more than 1,000,000 customers, and
2 for other electric utilities for any customer that has an
3 average monthly maximum electrical demand on the electric
4 utility's system of one megawatt or more, and (A) for which
5 there exists data on the customer's usage during the 3 years
6 preceding the date that the customer became eligible to take
7 delivery services, or (B) for which there does not exist data
8 on the customer's usage during the 3 years preceding the date
9 that the customer became eligible to take delivery services, if
10 in the electric utility's reasonable judgment there exists
11 comparable usage information or a sufficient basis to develop
12 such information, and further provided that the electric
13 utility can require customers for which an individual
14 calculation is made to sign contracts that set forth the
15 transition charges to be paid by the customer to the electric
16 utility pursuant to the tariff.

17 (h) An electric utility shall also be entitled to file
18 tariffs that allow it to collect transition charges from retail
19 customers in the electric utility's service area that do not
20 take delivery services but that take electric power or energy
21 from an alternative retail electric supplier or from an
22 electric utility other than the electric utility in whose
23 service area the customer is located. Such charges shall be
24 calculated, in accordance with the definition of transition
25 charges in Section 16-102, for the period of time that the
26 customer would be obligated to pay transition charges if it
27 were taking delivery services, except that no deduction for
28 delivery services revenues shall be made in such calculation,
29 and usage data from the customer's class shall be used where
30 historical usage data is not available for the individual
31 customer. The customer shall be obligated to pay such charges
32 on a lump sum basis on or before the date on which the customer
33 commences to take service from the alternative retail electric
34 supplier or other electric utility, provided, that the electric

1 utility in whose service area the customer is located shall
2 offer the customer the option of signing a contract pursuant to
3 which the customer pays such charges ratably over the period in
4 which the charges would otherwise have applied.

5 (i) An electric utility shall be entitled to add to the
6 bills of delivery services customers charges pursuant to
7 Sections 9-221, 9-222 (except as provided in Section 9-222.1),
8 and Section 16-114 of this Act, Section 5-5 of the Electricity
9 Infrastructure Maintenance Fee Law, Section 6-5 of the
10 Renewable Energy, Energy Efficiency, and Coal Resources
11 Development Law of 1997, and Section 13 of the Energy
12 Assistance Act.

13 (j) If a retail customer that obtains electric power and
14 energy from cogeneration or self-generation facilities
15 installed for its own use on or before January 1, 1997,
16 subsequently takes service from an alternative retail electric
17 supplier or an electric utility other than the electric utility
18 in whose service area the customer is located for any portion
19 of the customer's electric power and energy requirements
20 formerly obtained from those facilities (including that amount
21 purchased from the utility in lieu of such generation and not
22 as standby power purchases, under a cogeneration displacement
23 tariff in effect as of the effective date of this amendatory
24 Act of 1997), the transition charges otherwise applicable
25 pursuant to subsections (f), (g), or (h) of this Section shall
26 not be applicable in any year to that portion of the customer's
27 electric power and energy requirements formerly obtained from
28 those facilities, provided, that for purposes of this
29 subsection (j), such portion shall not exceed the average
30 number of kilowatt-hours per year obtained from the
31 cogeneration or self-generation facilities during the 3 years
32 prior to the date on which the customer became eligible for
33 delivery services, except as provided in subsection (f) of
34 Section 16-110.

1 (Source: P.A. 91-50, eff. 6-30-99; 92-690, eff. 7-18-02.)

2 (220 ILCS 5/16-111)

3 Sec. 16-111. Rates and restructuring transactions during
4 mandatory transition period.

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

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

29 (2) authorizing an electric utility to eliminate its
30 fuel adjustment clause and adjust its base rate tariffs in
31 accordance with subsection (b), (d), or (f) of Section
32 9-220 of this Act, to fix its fuel adjustment factor in
33 accordance with subsection (c) of Section 9-220 of this

1 Act, or to eliminate its fuel adjustment clause in
2 accordance with subsection (e) of Section 9-220 of this
3 Act;

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

11 (4) ordering or allowing into effect any tariff to
12 recover charges pursuant to Sections 9-201.5, 9-220.1,
13 9-221, 9-222 (except as provided in Section 9-222.1),
14 16-108, and 16-114 of this Act, Section 5-5 of the
15 Electricity Infrastructure Maintenance Fee Law, Section
16 6-5 of the Renewable Energy, Energy Efficiency, and Coal
17 Resources Development Law of 1997, and Section 13 of the
18 Energy Assistance Act.

19 After December 31, 2004, the provisions of this subsection
20 (a) shall not apply to an electric utility whose average
21 residential retail rate was 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 which served between
26 150,000 and 250,000 retail customers in this State on January
27 1, 1995 unless the electric utility or its holding company has
28 been acquired by or merged with an affiliate of another
29 electric utility subsequent to January 1, 2002. This exemption
30 shall be limited to this subsection (a) and shall not extend to
31 any other provisions of this Act.

32 (b) Notwithstanding the provisions of subsection (a), each
33 Illinois electric utility serving more than 12,500 customers in
34 Illinois shall file tariffs (i) reducing, effective August 1,

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

1 in effect immediately prior to January 1, 1998 or the
2 percentage by which the electric utility's average residential
3 retail rate exceeds the average residential retail rate of the
4 Midwest Utilities, based on data reported on Form 1 to the
5 Federal Energy Regulatory Commission for calendar year 2001;
6 and (B) if the average residential retail rate of an electric
7 utility serving between 150,000 and 250,000 retail customers in
8 this State on January 1, 1995 is less than or equal to 90% of
9 the average residential retail rate for the Midwest Utilities,
10 based on data reported on Form 1 to the Federal Energy
11 Regulatory Commission for calendar year 1995, then it shall
12 only be required to file tariffs (i) reducing, effective August
13 1, 1998, each component of its base rates to residential retail
14 customers by 2% from the base rates in effect immediately prior
15 to January 1, 1998; (ii) reducing, effective October 1, 2000,
16 each component of its base rates to residential retail
17 customers by 2% from the base rate in effect immediately prior
18 to January 1, 1998; and (iii) reducing, effective October 1,
19 2002, each component of its base rates to residential retail
20 customers by 1% from the base rates in effect immediately prior
21 to January 1, 1998. Provided, further, that any electric
22 utility for which a decrease in base rates has been or is
23 placed into effect between October 1, 1996 and the dates
24 specified in the preceding sentences of this subsection, other
25 than pursuant to the requirements of this subsection, shall be
26 entitled to reduce the amount of any reduction or reductions in
27 its base rates required by this subsection by the amount of
28 such other decrease. The tariffs required under this subsection
29 shall be filed 45 days in advance of the effective date.
30 Notwithstanding anything to the contrary in Section 9-220 of
31 this Act, no restatement of base rates in conjunction with the
32 elimination of a fuel adjustment clause under that Section
33 shall result in a lesser decrease in base rates than customers
34 would otherwise receive under this subsection had the electric

1 utility's fuel adjustment clause not been eliminated.

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

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

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

1 subsection (e) of this Section, is below the 2-year average for
2 the same 2 years of the monthly average yields of 30-year U.S.
3 Treasury bonds published by the Board of Governors of the
4 Federal Reserve System in its weekly H.15 Statistical Release
5 or successor publication. The Commission shall review the
6 electric utility's request, and may review the justness and
7 reasonableness of all rates for tariffed services, in
8 accordance with the provisions of Article IX of this Act,
9 provided that the Commission shall consider any special or
10 negotiated adjustments to the revenue requirement agreed to
11 between the electric utility and the other parties to the
12 proceeding. In setting rates under this Section, the Commission
13 shall exclude the costs and revenues that are associated with
14 competitive services and any billing or pricing experiments
15 conducted under Section 16-106.

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

1 date of the sale by the affiliated interest to December 31,
2 2008 ~~2006~~, exceeds the 2-year average of the Index for the same
3 2 years by 1.5 or more percentage points, the electric utility
4 shall make refunds to customers beginning the first billing day
5 of April in the following year in the manner described in
6 paragraph (3) of this subsection. For purposes of this
7 subsection (e), the "Index" shall be the sum of (A) the average
8 for the 12 months ended September 30 of the monthly average
9 yields of 30-year U.S. Treasury bonds published by the Board of
10 Governors of the Federal Reserve System in its weekly H.15
11 Statistical Release or successor publication for each year 1998
12 through 2008 ~~2006~~, and (B) (i) 4.00 percentage points for each
13 of the 12-month periods ending September 30, 1998 through
14 September 30, 1999 or 8.00 percentage points if the electric
15 utility's average residential retail rate is less than or equal
16 to 90% of the average residential retail rate for the "Midwest
17 Utilities", as that term is defined in subsection (b) of this
18 Section, based on data reported on Form 1 to the Federal Energy
19 Regulatory Commission for calendar year 1995, and the electric
20 utility served between 150,000 and 250,000 retail customers on
21 January 1, 1995, (ii) 7.00 percentage points for each of the
22 12-month periods ending September 30, 2000 through September
23 30, 2008 ~~2006~~ if the electric utility was providing service to
24 at least 1,000,000 customers in this State on January 1, 1999,
25 or 9.00 percentage points if the electric utility's average
26 residential retail rate is 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 the electric utility
31 served between 150,000 and 250,000 retail customers in this
32 State on January 1, 1995, (iii) 11.00 percentage points for
33 each of the 12-month periods ending September 30, 2000 through
34 September 30, 2008 ~~2006~~, but only if the electric utility's

1 average residential retail rate is less than or equal to 90% of
2 the average residential retail rate for the "Midwest
3 Utilities", as that term is defined in subsection (b) of this
4 Section, based on data reported on Form 1 to the Federal Energy
5 Regulatory Commission for calendar year 1995, the electric
6 utility served between 150,000 and 250,000 retail customers in
7 this State on January 1, 1995, and the electric utility offers
8 delivery services on or before June 1, 2000 to retail customers
9 whose annual electric energy use comprises 33% of the kilowatt
10 hour sales to that group of retail customers that are
11 classified under Division D, Groups 20 through 39 of the
12 Standard Industrial Classifications set forth in the Standard
13 Industrial Classification Manual published by the United
14 States Office of Management and Budget, excluding the kilowatt
15 hour sales to those customers that are eligible for delivery
16 services pursuant to Section 16-104(a)(1)(i), and offers
17 delivery services to its remaining retail customers classified
18 under Division D, Groups 20 through 39 on or before October 1,
19 2000, and, provided further, that the electric utility commits
20 not to petition pursuant to Section 16-108(f) for entry of an
21 order by the Commission authorizing the electric utility to
22 implement transition charges for an additional period after
23 December 31, 2008 ~~2006~~, or (iv) 5.00 percentage points for each
24 of the 12-month periods ending September 30, 2000 through
25 September 30, 2008 ~~2006~~ for all other electric utilities or
26 7.00 percentage points for such utilities for each of the
27 12-month periods ending September 30, 2000 through September
28 30, 2008 ~~2006~~ for any such utility that commits not to petition
29 pursuant to Section 16-108(f) for entry of an order by the
30 Commission authorizing the electric utility to implement
31 transition charges for an additional period after December 31,
32 2008 ~~2006~~ or 11.00 percentage points for each of the 12-month
33 periods ending September 30, 2005 and September 30, 2008 ~~2006~~
34 for each electric utility providing service to fewer than

1 6,500, or between 75,000 and 150,000, electric retail customers
2 in this State on January 1, 1995 if such utility commits not to
3 petition pursuant to Section 16-108(f) for entry of an order by
4 the Commission authorizing the electric utility to implement
5 transition charges for an additional period after December 31,
6 2008 ~~2006~~.

7 (1) For purposes of this subsection (e), "excess
8 earnings" means the difference between (A) the 2-year
9 average of the electric utility's earned rate of return on
10 common equity, less (B) the 2-year average of the sum of
11 (i) the Index applicable to each of the 2 years and (ii)
12 1.5 percentage points; provided, that "excess earnings"
13 shall never be less than zero.

14 (2) On or before March 31 of each year 2000 through
15 2009 ~~2007~~ each electric utility shall file a report with
16 the Commission showing its earned rate of return on common
17 equity, calculated in accordance with this subsection, for
18 the preceding calendar year and the average for the
19 preceding 2 calendar years.

20 (3) If an electric utility has excess earnings,
21 determined in accordance with paragraphs (1) and (2) of
22 this subsection, the refunds which the electric utility
23 shall pay to its customers beginning the first billing day
24 of April in the following year shall be calculated and
25 applied as follows:

26 (i) The electric utility's excess earnings shall
27 be multiplied by the average of the beginning and
28 ending balances of the electric utility's common
29 equity for the 2-year period in which excess earnings
30 occurred.

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

1 (iii) The result of the calculation in (ii) shall
2 be divided by the sum of the electric utility's
3 projected total kilowatt-hour sales to retail
4 customers plus projected kilowatt-hours to be
5 delivered to delivery services customers over a one
6 year period beginning with the first billing date in
7 April in the succeeding year to determine a cents per
8 kilowatt-hour refund factor.

9 (iv) The cents per kilowatt-hour refund factor
10 calculated in (iii) shall be credited to the electric
11 utility's customers by applying the factor on the
12 customer's monthly bills to each kilowatt-hour sold or
13 delivered until the total amount calculated in (ii) has
14 been paid to customers.

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

20 (g) During the mandatory transition period, an electric
21 utility may, without obtaining any approval of the Commission
22 other than that provided for in this subsection and
23 notwithstanding any other provision of this Act or any rule or
24 regulation of the Commission that would require such approval:

25 (1) implement a reorganization, other than a merger of
26 2 or more public utilities as defined in Section 3-105 or
27 their holding companies;

28 (2) retire generating plants from service;

29 (3) sell, assign, lease or otherwise transfer assets to
30 an affiliated or unaffiliated entity and as part of such
31 transaction enter into service agreements, power purchase
32 agreements, or other agreements with the transferee;
33 provided, however, that the prices, terms and conditions of
34 any power purchase agreement must be approved or allowed

1 into effect by the Federal Energy Regulatory Commission; or

2 (4) use any accelerated cost recovery method including
3 accelerated depreciation, accelerated amortization or
4 other capital recovery methods, or record reductions to the
5 original cost of its assets.

6 In order to implement a reorganization, retire generating
7 plants from service, or sell, assign, lease or otherwise
8 transfer assets pursuant to this Section, the electric utility
9 shall comply with subsections (c) and (d) of Section 16-128, if
10 applicable, and subsection (k) of this Section, if applicable,
11 and provide the Commission with at least 30 days notice of the
12 proposed reorganization or transaction, which notice shall
13 include the following information:

14 (i) a complete statement of the entries that the
15 electric utility will make on its books and records of
16 account to implement the proposed reorganization or
17 transaction together with a certification from an
18 independent certified public accountant that such
19 entries are in accord with generally accepted
20 accounting principles and, if the Commission has
21 previously approved guidelines for cost allocations
22 between the utility and its affiliates, a
23 certification from the chief accounting officer of the
24 utility that such entries are in accord with those cost
25 allocation guidelines;

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

30 (iii) a list of all federal approvals or approvals
31 required from departments and agencies of this State,
32 other than the Commission, that the electric utility
33 has or will obtain before implementing the
34 reorganization or transaction;

1 (iv) an irrevocable commitment by the electric
2 utility that it will not, as a result of the
3 transaction, impose any stranded cost charges that it
4 might otherwise be allowed to charge retail customers
5 under federal law or increase the transition charges
6 that it is otherwise entitled to collect under this
7 Article XVI; and

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

1 electric utility's fuel adjustment clause during the
2 full calendar year preceding the transfer, with such
3 limit to be adjusted each year thereafter by the Gross
4 Domestic Product Implicit Price Deflator.

5 (vi) In addition, if the electric utility proposes
6 to sell, assign, or lease, (A) either (1) an amount of
7 generating plant that brings the amount of net
8 dependable generating capacity transferred pursuant to
9 this subsection to an amount equal to or greater than
10 15% of its net dependable capacity on the effective
11 date of this amendatory Act of 1997, or (2) one or more
12 generating plants with a total net dependable capacity
13 of 1100 megawatts, or (B) transmission and
14 distribution facilities that either (1) bring the
15 amount of transmission and distribution facilities
16 transferred pursuant to this subsection to an amount
17 equal to or greater than 15% of the electric utility's
18 total depreciated original cost investment in such
19 facilities, or (2) represent an investment of
20 \$25,000,000 in terms of total depreciated original
21 cost, the electric utility shall provide, in addition
22 to the information listed in subparagraphs (i) through
23 (v), the following information: (A) a description of
24 how the electric utility will meet its service
25 obligations under this Act in a safe and reliable
26 manner and (B) the electric utility's projected earned
27 rate of return on common equity, calculated in
28 accordance with subsection (d) of this Section, for
29 each year from the date of the notice through December
30 31, 2008 ~~2006~~ both with and without the proposed
31 transaction. If the Commission has not issued an order
32 initiating a hearing on the proposed transaction
33 within 30 days after the date the electric utility's
34 notice is filed, the transaction shall be deemed

1 approved. The Commission may, after notice and
2 hearing, prohibit the proposed transaction if it makes
3 either or both of the following findings: (1) that the
4 proposed transaction will render the electric utility
5 unable to provide its tariffed services in a safe and
6 reliable manner, or (2) that there is a strong
7 likelihood that consummation of the proposed
8 transaction will result in the electric utility being
9 entitled to request an increase in its base rates
10 during the mandatory transition period pursuant to
11 subsection (d) of this Section. Any hearing initiated
12 by the Commission into the proposed transaction shall
13 be completed, and the Commission's final order
14 approving or prohibiting the proposed transaction
15 shall be entered, within 90 days after the date the
16 electric utility's notice was filed. Provided,
17 however, that a sale, assignment, or lease of
18 transmission facilities to an independent system
19 operator that meets the requirements of Section 16-126
20 shall not be subject to Commission approval under this
21 Section.

22 In any proceeding conducted by the Commission
23 pursuant to this subparagraph (vi), intervention shall
24 be limited to parties with a direct interest in the
25 transaction which is the subject of the hearing and any
26 statutory consumer protection agency as defined in
27 subsection (d) of Section 9-102.1. Notwithstanding the
28 provisions of Section 10-113 of this Act, any
29 application seeking rehearing of an order issued under
30 this subparagraph (vi), whether filed by the electric
31 utility or by an intervening party, shall be filed
32 within 10 days after service of the order.

33 The Commission shall not in any subsequent proceeding or
34 otherwise, review such a reorganization or other transaction

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

20 (h) During the mandatory transition period, the Commission
21 shall not establish or use any rates of depreciation, which for
22 purposes of this subsection shall include amortization, for any
23 electric utility other than those established pursuant to
24 subsection (c) of Section 5-104 of this Act or utilized
25 pursuant to subsection (g) of this Section. Provided, however,
26 that in any proceeding to review an electric utility's rates
27 for tariffed services pursuant to Section 9-201, 9-202, 9-250
28 or 16-111(d) of this Act, the Commission may establish new
29 rates of depreciation for the electric utility in the same
30 manner provided in subsection (d) of Section 5-104 of this Act.
31 An electric utility implementing an accelerated cost recovery
32 method including accelerated depreciation, accelerated
33 amortization or other capital recovery methods, or recording
34 reductions to the original cost of its assets, pursuant to

1 subsection (g) of this Section, shall file a statement with the
2 Commission describing the accelerated cost recovery method to
3 be implemented or the reduction in the original cost of its
4 assets to be recorded. Upon the filing of such statement, the
5 accelerated cost recovery method or the reduction in the
6 original cost of assets shall be deemed to be approved by the
7 Commission as though an order had been entered by the
8 Commission.

9 (i) Subsequent to the mandatory transition period, the
10 Commission, in any proceeding to establish rates and charges
11 for tariffed services offered by an electric utility, shall
12 consider only (1) the then current or projected revenues,
13 costs, investments and cost of capital directly or indirectly
14 associated with the provision of such tariffed services; (2)
15 collection of transition charges in accordance with Sections
16 16-102 and 16-108 of this Act; (3) recovery of any employee
17 transition costs as described in Section 16-128 which the
18 electric utility is continuing to incur, including recovery of
19 any unamortized portion of such costs previously incurred or
20 committed, with such costs to be equitably allocated among
21 bundled services, delivery services, and contracts with
22 alternative retail electric suppliers; and (4) recovery of the
23 costs associated with the electric utility's compliance with
24 decommissioning funding requirements; and shall not consider
25 any other revenues, costs, investments or cost of capital of
26 either the electric utility or of any affiliate of the electric
27 utility that are not associated with the provision of tariffed
28 services. In setting rates for tariffed services, the
29 Commission shall equitably allocate joint and common costs and
30 investments between the electric utility's competitive and
31 tariffed services. In determining the justness and
32 reasonableness of the electric power and energy component of an
33 electric utility's rates for tariffed services subsequent to
34 the mandatory transition period and prior to the time that the

1 provision of such electric power and energy is declared
2 competitive, the Commission shall consider the extent to which
3 the electric utility's tariffed rates for such component for
4 each customer class exceed the market value determined pursuant
5 to Section 16-112, and, if the electric power and energy
6 component of such tariffed rate exceeds the market value by
7 more than 10% for any customer class, may establish such
8 electric power and energy component at a rate equal to the
9 market value plus 10%. In any such case, the Commission may
10 also elect to extend the provisions of Section 16-111(e) for
11 any period in which the electric utility is collecting
12 transition charges, using information applicable to such
13 period.

14 (j) During the mandatory transition period, an electric
15 utility may elect to transfer to a non-operating income account
16 under the Commission's Uniform System of Accounts either or
17 both of (i) an amount of unamortized investment tax credit that
18 is in addition to the ratable amount which is credited to the
19 electric utility's operating income account for the year in
20 accordance with Section 46(f)(2) of the federal Internal
21 Revenue Code of 1986, as in effect prior to P.L. 101-508, or
22 (ii) "excess tax reserves", as that term is defined in Section
23 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided
24 that (A) the amount transferred may not exceed the amount of
25 the electric utility's assets that were created pursuant to
26 Statement of Financial Accounting Standards No. 71 which the
27 electric utility has written off during the mandatory
28 transition period, and (B) the transfer shall not be effective
29 until approved by the Internal Revenue Service. An electric
30 utility electing to make such a transfer shall file a statement
31 with the Commission stating the amount and timing of the
32 transfer for which it intends to request approval of the
33 Internal Revenue Service, along with a copy of its proposed
34 request to the Internal Revenue Service for a ruling. The

1 Commission shall issue an order within 14 days after the
2 electric utility's filing approving, subject to receipt of
3 approval from the Internal Revenue Service, the proposed
4 transfer.

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

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

29 (220 ILCS 5/16-112)

30 Sec. 16-112. Determination of market value.

31 (a) The market value to be used in the calculation of
32 transition charges as defined in Section 16-102 shall be
33 determined in accordance with either (i) a tariff that has been

1 filed by the electric utility with the Commission pursuant to
2 Article IX of this Act and that provides for a determination of
3 the market value for electric power and energy as a function of
4 an exchange traded or other market traded index, options or
5 futures contract or contracts applicable to the market in which
6 the utility sells, and the customers in its service area buy,
7 electric power and energy, or (ii) in the event no such tariff
8 has been placed into effect for the electric utility, or in the
9 event such tariff does not establish market values for each of
10 the years specified in the neutral fact-finder process
11 described in subsections (b) through (h) of this Section, a
12 tariff incorporating the market values resulting from the
13 neutral fact-finder process set forth in subsections (b)
14 through (h) of this Section.

15 (b) Except as provided in subsection (m) of this Section,
16 on or before April 30, 1998, on or before February 28, 1999,
17 and on or before each April 30 from 2000 until 2009 ~~2007~~, the
18 Commission shall appoint a neutral fact-finder to make the
19 calculations described in subsection (c) of this Section. The
20 neutral fact-finder shall be a member of a national public
21 accounting firm, shall not have served as the neutral
22 fact-finder in the previous year, and shall be selected from a
23 list of candidates provided by a nationally recognized provider
24 of neutral fact-finders that has established rules for
25 maintaining confidentiality. An amount sufficient to pay the
26 fees of the neutral fact-finder shall be appropriated annually
27 from the Public Utility Fund in the State treasury.

28 (c) On or before June 1, 1998, on or before April 1, 1999,
29 and on or before each June 1 from 2000 until 2009 ~~2007~~, or
30 until discontinued in accordance with subsection (m) of this
31 Section, each electric utility and each alternative retail
32 electric supplier shall submit to the neutral fact-finder a
33 summary of (A) all contracts entered into after June 1, 1997
34 that are for the sale of electric power and energy from a

1 generating facility or facilities located in this State or
2 located in a contiguous State and owned by an electric utility
3 as part of its interconnected operating system and delivery
4 during one or more of the 5 years succeeding the date of
5 submission, and (B) all contracts entered into after June 1,
6 1997 for purchase and delivery of electric power and energy in
7 or into this State during one or more of the 5 years succeeding
8 the date of submission; provided, however, that such contracts
9 shall not include (i) contracts between the electric utility
10 and an affiliate; (ii) sales, purchases, or deliveries made
11 under rates and tariffs filed with the Commission, except for
12 tariffs filed pursuant to subsection (d) of Section 16-110 and
13 except for special or negotiated rate contracts between an
14 electric utility and a retail customer to the extent that such
15 contracts are for the provision of electric power and energy
16 after the date that the customer becomes eligible for delivery
17 services; and (iii) extensions or amendments to full
18 requirements wholesale contracts existing as of the effective
19 date of this amendatory Act of 1997, provided that such
20 contracts, extensions, or amendments are cost of service
21 regulated by the Federal Energy Regulatory Commission. The
22 summaries shall, at a minimum, identify the date of the
23 contract; the year in which the electric power or energy is to
24 be sold or delivered; the point of delivery; defining
25 characteristics such as the nature of the power transaction
26 (for example, reserve responsibility (firm, non-firm)), length
27 of contract and temporal differences (for example, season,
28 on-peak or off-peak); and the applicable prices stated at the
29 point at which the electric power and energy leaves the
30 electric utility's or alternative retail electric supplier's
31 transmission system, as the case may be, in the case of
32 contracts described in item (A) and at the point at which the
33 electric power and energy enters the electric utility's
34 transmission system in the case of contracts in item (B),

1 provided, that the applicable price shall be stated at the
2 point at which the electric power and energy enters the
3 electric utility's transmission system in the case of electric
4 power and energy generated for delivery within the electric
5 utility's service area. In reporting to the neutral fact-finder
6 the price of power and energy sold under bundled service
7 contracts, electric utilities and alternative retail electric
8 suppliers shall deduct from the contract price the charges for
9 delivery services, including transition charges, applicable to
10 delivery services customers in a utility's service area, and
11 charges for services, if any, other than the provision of power
12 and energy or delivery services. The Commission may adopt
13 orders setting forth requirements governing the form and
14 content of such summaries.

15 (d) The neutral fact-finder shall calculate market values
16 for electric power and energy for each electric utility, taking
17 into account the defining characteristics set forth in
18 subsection (c) of this Section; provided, however, that the
19 neutral fact-finder may determine that a particular value is
20 appropriate for more than one electric utility, or for all
21 electric utilities in this State. The neutral fact-finder shall
22 calculate the market values for the next year and, to the
23 extent the summaries include a sufficient number of actual
24 contracts to represent a viable market for the sale and
25 delivery of electric power and energy in subsequent years, for
26 each of the 4 succeeding years.

27 (e) In calculating market values for electric power, the
28 neutral fact-finder shall weight contract prices (including
29 any contract price indices) by both the amount of capacity
30 covered by the contract and the number of hours in which
31 capacity is to be provided under the contract in each period of
32 the year, shall take into account all of the defining
33 characteristics set forth in subsection (c) of this Section and
34 shall develop such values as required to represent the

1 different types of market values of electric power.

2 (f) The neutral fact-finder shall base calculations of the
3 market values for electric energy on the energy prices stated
4 in the contracts, and where no explicit energy prices or index
5 price basis are stated, on the actual energy costs of the
6 supplier in the corresponding period of the preceding year that
7 would have been applicable to the electric energy provided
8 under the contract. The neutral fact-finder shall develop
9 market values for electric energy and shall take into account
10 the defining characteristics set forth in subsection (c) of
11 this Section, as required to represent the market values of
12 such electric energy.

13 (g) If the contracts used by the neutral fact-finder base
14 prices for future years on one or more indices, the neutral
15 fact-finder shall identify such indices in his or her final
16 report, develop a weighting for each index, and calculate a
17 weighted average index. The market values shall be calculated
18 using the weighted average index when the actual values of the
19 component indices are known.

20 (h) The neutral fact-finder shall publish a final report on
21 or before July 30 of each year, except that in 1999 the neutral
22 fact finder shall publish the report on or before May 30,
23 setting forth the calculated market values and stating the
24 basis for such calculations. The final report shall not,
25 however, disclose any proprietary or confidential data.

26 (i) The market values calculated by the neutral fact-finder
27 shall not be admissible in any proceeding for any purpose other
28 than the calculation of transition charges or calculation of
29 the price for the power purchase options provided pursuant to
30 subsection (b) and (c) of Section 16-110.

31 (j) The Commission shall have access to all contracts
32 described in subsection (c) of this Section and shall perform
33 such audits as it and the neutral fact-finder deem necessary to
34 insure the accuracy of the summaries submitted to the neutral

1 fact-finder. The summaries described in subsection (c) of this
2 Section and each contract shall be accorded confidential and
3 proprietary treatment and their review shall be subject to the
4 provisions of Sections 4-404 and 5-108 of this Act, and the
5 contract between the Commission and the neutral fact-finder
6 shall contain provisions obligating the neutral fact-finder to
7 comply with such Sections. The summaries shall not be
8 discoverable by any party in any proceeding absent a compelling
9 demonstration of need.

10 (k) In determining the market values to be used for the
11 various customer classes in calculating transition charges as
12 defined in Section 16-102 or for the power purchase options set
13 forth in Section 16-110, an electric utility shall apply the
14 market values that are determined as set forth in subsection
15 (a) to the electric power and energy that would have been used
16 to serve the delivery services customers' electric power and
17 energy requirements, based on the usage specified in Section
18 16-102 and taking into account the daily, monthly, annual and
19 other relevant characteristics of the customers' demands on the
20 electric utility's system.

21 (l) In calculating a lump sum transition charge payment for
22 the purposes of subsection (h) of Section 16-108, the electric
23 utility shall use the market values that were determined as
24 provided in its tariff, or if such market values have not been
25 determined for the full period of time covered by such lump sum
26 calculation, such other basis as is stated in the electric
27 utility's tariff filed pursuant to Section 16-108.

28 (m) The Commission may approve or reject, or propose
29 modifications to, any tariff providing for the determination of
30 market value that has been proposed by an electric utility
31 pursuant to subsection (a) of this Section, but shall not have
32 the power to otherwise order the electric utility to implement
33 a modified tariff or to place into effect any tariff for the
34 determination of market value other than one incorporating the

1 neutral fact-finder procedure set forth in this Section.
2 Provided, however, that if each electric utility serving at
3 least 300,000 customers has placed into effect a tariff that
4 provides for a determination of market value as a function of
5 an exchange traded or other market traded index, options or
6 futures contract or contracts, then the Commission can require
7 any other electric utilities to file such a tariff, and can
8 terminate the neutral fact-finder procedure for the periods
9 covered by such tariffs.

10 (n) To the extent that the summaries list a sufficient
11 number of actual contracts to represent a viable market and
12 market values can be determined for more than one year, the
13 electric utility shall offer customers that are obligated to
14 pay transition charges contracts that establish for one or more
15 years, up to a maximum of the lesser of 5 years or the
16 remaining number of years until December 31, 2010 ~~2008~~, the
17 market value or values to be used in calculating the customer's
18 transition charges in such years and for which market value
19 determinations have been made. The electric utility may require
20 any customer to give up to one year notice prior to entering
21 into a one or 2 year contract pursuant to this subsection, up
22 to 2 years notice for a 3 year contract, and up to 3 years
23 notice for a 4 or 5 year contract. Contracts of one or 2 years
24 duration shall incorporate the market values that were
25 determined as provided in this Section in the year in which the
26 notice is required to be given. Contracts of more than 2 years
27 duration shall incorporate the market values that are
28 determined in the year prior to the first year in which the
29 electric utility will collect transition charges from the
30 customer under the contract. The electric utility shall also
31 allow customers to select, at the time that a customer gives
32 its notice, an option to revoke the notice within 30 days
33 following the determination of the market values that will
34 apply under the contract requested by the customer, and may

1 charge customers a fee for such option that is set forth in a
2 tariff filed pursuant to Article IX and that is adequate to
3 allow the electric utility to recover its transactional costs
4 and compensate it based on the cost that would be incurred to
5 purchase an option to cover the risk associated with the
6 customer's option to revoke. The electric utility shall not be
7 required to offer customers a contract under this paragraph for
8 any year for which no determination of market value has been
9 made either by the neutral fact-finder or pursuant to a tariff
10 filed by the electric utility.

11 (o) An electric utility shall have no obligation to provide
12 electric power or energy as a tariffed service for the electric
13 power and energy requirements placed on delivery service by any
14 customer that has entered into a contract pursuant to
15 subsection (n) of this Section and has not purchased and
16 exercised an option to revoke, during the term of the contract.
17 A customer that has purchased and exercised an option to revoke
18 under this subsection shall remain eligible to receive any
19 tariffed service for which it would otherwise be eligible.

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

21 (220 ILCS 5/16-120)

22 Sec. 16-120. Development of competitive market; Commission
23 study and reports; investigation.

24 (a) On or before December 31, 1999 and once every 3 years
25 thereafter, the Commission shall monitor and analyze patterns
26 of entry and exit, applications for entry and exit, and any
27 barriers to entry or participation that may exist, for services
28 provided under this Article; shall analyze any impediments to
29 the establishment of a fully competitive energy and power
30 market in Illinois; and shall include its findings together
31 with appropriate recommendations for legislative action in a
32 report to the General Assembly.

33 (b) Beginning in 2001, and ending in 2008 ~~2006~~, the

1 Commission shall prepare an annual report regarding the
2 development of electricity markets in Illinois which shall be
3 filed by April 1 of each year with the Joint Committee on
4 Legislative Support Services of the General Assembly and the
5 Governor and which shall be publicly available. Such report
6 shall include, at a minimum, the following information:

7 (1) the aggregate annual peak demand of retail
8 customers in the State of Illinois in the preceding
9 calendar year;

10 (2) the total annual kilowatt-hours delivered and sold
11 to retail customers in the State of Illinois by each
12 electric utility within its own service territory, each
13 electric utility outside its service territory, and
14 alternative retail electric suppliers in the preceding
15 calendar year;

16 (3) the percentage of the total kilowatt-hours
17 delivered and sold to retail customers in the State of
18 Illinois in the preceding calendar year by each electric
19 utility within its service territory, each electric
20 utility outside its service territory, and each
21 alternative retail electric supplier; and

22 (4) any other information the Commission considers
23 significant in assessing the development of Illinois
24 electricity markets, which may include, to the extent
25 available, information similar to that described in items
26 1, 2 and 3 with respect to cogeneration, self-generation
27 and other sources of electric power and energy provided to
28 customers that do not take delivery services or bundled
29 electric utility services.

30 The Commission may also include such other information as
31 it deems to be necessary or beneficial in describing or
32 explaining the results of its Report. The Report required by
33 this Section shall be adopted by a vote of the full Commission
34 prior to filing. Proprietary or confidential information shall

1 not be disclosed publicly. Nothing contained in this Section
2 shall prohibit the Commission from taking actions that would
3 otherwise be allowed under this Act.

4 (c) The Commission shall prepare a report on the value of
5 municipal aggregation of electricity customers. The report
6 shall be filed with the General Assembly and the Governor no
7 later than January 15, 2003 and shall be publicly available.
8 The report shall, at a minimum, include:

9 (1) a description and analysis of actual and potential
10 forms of aggregation of electricity customers in Illinois
11 and in the other states, including aggregation through
12 municipal, affinity, and other organizations and through
13 aggregation of consumer purchases of electricity from
14 renewable energy sources;

15 (2) estimates of the potential benefits of municipal
16 aggregation to Illinois electricity customers in at least 5
17 specific municipal examples comparing their costs under
18 bundled rates and unbundled rates, including real-time
19 prices;

20 (3) a description of the barriers to municipal and
21 other forms of aggregation in Illinois, including legal,
22 economic, informational, and other barriers; and

23 (4) options for legislative action to foster municipal
24 and other forms of aggregation of electricity customers.

25 In preparing the report, the Commission shall consult with
26 persons involved in aggregation or the study of aggregation of
27 electricity customers in Illinois, including municipalities,
28 utilities, aggregators, and non-profit organizations. The
29 provisions of Section 16-122 notwithstanding, the Commission
30 may request and utilities shall provide such aggregated load
31 data as may be necessary to perform the analyses required by
32 this subsection; provided, however, proprietary or
33 confidential information shall not be disclosed publicly.

34 (Source: P.A. 92-585, eff. 6-26-02.)

1 (220 ILCS 5/16-130)

2 Sec. 16-130. Annual Reports. The General Assembly finds
3 that it is necessary to have reliable and accurate information
4 regarding the transition to a competitive electric industry. In
5 addition to the annual report requirements pursuant to Section
6 5-109 of this Act, each electric utility shall file with the
7 Commission a report on the following topics in accordance with
8 the schedule set forth in subsection (b) of this Section:

9 (1) Data on each customer class of the electric utility
10 in which delivery services have been elected including:

11 (A) number of retail customers in each class that
12 have elected delivery service;

13 (B) kilowatt hours consumed by the customers
14 described in subparagraph (A);

15 (C) revenue loss experienced by the utility as a
16 result of customers electing delivery services or
17 market-based prices as compared to continued service
18 under otherwise applicable tariffed rates;

19 (D) total amount of funds collected from each
20 customer class pursuant to the transition charges
21 authorized in Section 16-108;

22 (E) Such other information as the Commission may by
23 rule require.

24 (2) A description of any steps taken by the electric
25 utility to mitigate and reduce its costs, including both a
26 detailed description of steps taken during the preceding
27 calendar year and a summary of steps taken since the
28 effective date of this amendatory Act of 1997, and
29 including, to the extent practicable, quantification of
30 the costs mitigated or reduced by specific actions taken by
31 the electric utility.

32 (3) A description of actions taken under Sections
33 5-104, 7-204, 9-220, and 16-111 of this Act. This

1 information shall include but not be limited to:

2 (A) a description of the actions taken;

3 (B) the effective date of the action;

4 (C) the annual savings or additional charges
5 realized by customers from actions taken, by customer
6 class and total for each year;

7 (D) the accumulated impact on customers by
8 customer class and total; and

9 (E) a summary of the method used to quantify the
10 impact on customers.

11 (4) A summary of the electric utility's use of
12 transitional funding instruments, including a description
13 of the electric utility's use of the proceeds of any
14 transitional funding instruments it has issued in
15 accordance with Article XVIII of this Act.

16 (5) Kilowatt-hours consumed in the twelve months
17 ending December 31, 1996 (which kilowatt-hours are hereby
18 referred to as "base year sales") by customer class
19 multiplied by the revenue per kilowatt hour, adjusted to
20 remove charges added to customers' bills pursuant to
21 Sections 9-221 and 9-222 of this Act, during the twelve
22 months ending December 31, 1996, adjusted for the
23 reductions required by subsection (b) of Section 16-111 and
24 the mitigation factors contained in Section 16-102. This
25 amount shall be stated for: (i) each calendar year
26 preceding the year in which a report is required to be
27 submitted pursuant to subsection (b); and (ii) as a
28 cumulative total of all calendar years beginning with 1998
29 and ending with the calendar year preceding the year in
30 which a report is required to be submitted pursuant to
31 subsection (b).

32 (6) Calculations identical to those required by
33 subparagraph (5) except that base year sales shall be
34 adjusted for growth in the electric utility's service

1 territory, in addition to the other adjustments specified
2 by the first sentence of subparagraph (5).

3 (7) The electric utility's total revenue and net income
4 for each calendar year beginning with 1997 through the
5 calendar year preceding the year in which a report is
6 required to be submitted pursuant to subsection (b) as
7 reported in the electric utility's Form 1 report to the
8 Federal Energy Regulatory Commission.

9 (8) Any consideration in excess of the net book cost as
10 of the effective date of this amendatory Act of 1997
11 received by the electric utility during the year from a
12 sale made subsequent to the effective date of this
13 amendatory Act of 1997 to a non-affiliated third party of
14 any generating plant that was owned by the electric utility
15 on the effective date of this amendatory Act of 1997.

16 (9) Any consideration received by the electric utility
17 from sales or transfers during the year to an affiliated
18 interest of generating plant, or other plant that
19 represents an investment of \$25,000,000 or more in terms of
20 total depreciated original cost, which generating or other
21 plant were owned by the electric utility prior to the
22 effective date of this amendatory Act of 1997.

23 (10) Any consideration received by an affiliated
24 interest of an electric utility from sales or transfers
25 during the year to a non-affiliated third party of
26 generating plant, but only if: (i) the electric utility had
27 previously sold or transferred such plant to the affiliated
28 interest subsequent to the effective date of this
29 amendatory Act of 1997; (ii) the affiliated interest sells
30 or transfers such plant to a non-affiliated third party
31 prior to December 31, 2008 ~~2006~~; and (iii) the affiliated
32 interest receives consideration for the sale or transfer of
33 such plant to the non-affiliated third party in an amount
34 greater than the cost or price at which such plant was sold

1 or transferred to the affiliated interest by the electric
2 utility.

3 (11) A summary account of those expenditures made for
4 projects, programs, and improvements relating to
5 transmission and distribution including, without
6 limitation, infrastructure expansion, repair and
7 replacement, capital investments, operations and
8 maintenance, and vegetation management, pursuant to a
9 written commitment made under subsection (k) of Section
10 16-111.

11 (b) The information required by subsection (a) shall be
12 filed by each electric utility on or before March 1 of each
13 year 1999 through 2009 ~~2007~~ or through such additional years as
14 the electric utility is collecting transition charges pursuant
15 to subsection (f) of Section 16-108, for the previous calendar
16 year. The information required by subparagraph (6) of
17 subsection (a) for calendar year 1997 shall be submitted by the
18 electric utility on or before March 1, 1999.

19 (c) On or before May 15 of each year 1999 through 2008 ~~2006~~
20 or through such additional years as the electric utility is
21 collecting transition charges pursuant to subsection (f) of
22 Section 16-108, the Commission shall submit a report to the
23 General Assembly which summarizes the information provided by
24 each electric utility under this Section; provided, however,
25 that proprietary or confidential information shall not be
26 publicly disclosed.

27 (Source: P.A. 90-561, eff. 12-16-97; 91-50, eff. 6-30-99.)

28 Section 99. Effective date. This Act takes effect upon
29 becoming law."