

94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5863

Introduced 11/21/06, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-102
220 ILCS 5/16-111
220 ILCS 5/16-113

Amends the Electric Service Customer Choice and Rate Relief Law of 1997 in the Public Utilities Act. Provides that the "mandatory transition period" extends through the date on which the Illinois Commerce Commission has approved declarations of competitive service for all classes of service offered in the service areas of all electric utilities that, on December 31, 2005, served at least 100,000 customers (now, the mandatory transition period extends through January 1, 2007). Prohibits the Commission from taking certain actions prior to 2008 (now, the prohibition is during the mandatory transition period) with respect to (i) initiating, authorizing, or ordering any change by way of increase or (ii) in approving an application for a merger, imposing a condition requiring any filing for an increase, decrease, or change in or other review of an electric utility's rates or enforcing such a condition. Deletes a provision prohibiting the Commission from initiating, authorizing, or ordering any change by way of a decrease. Deletes a provision that provides that the Commission is not prohibited from approving the application of an electric utility to implement an alternative to rate of return regulation or a regulatory mechanism that rewards or penalizes the utility through adjustment of rates based on utility performance. Provides that, during the remainder of the mandatory transition period, if any, the Commission may modify rates. Requires the Commission to hold a hearing on any petition by an electric utility requesting the Commission to declare a tariffed service provided by the utility to be a competitive service (now, the Commission shall hold a hearing if the Commission deems it necessary). Provides that the Commission shall only declare the class of tariffed service to be a competitive service if the electric utility demonstrates that at least 33% of the customers in the electric utility's service area that are eligible to take the class of tariffed service instead take service from alternative retail electric suppliers and that at least 3 alternative retail electric suppliers provide service that is comparable to the class of tariffed service to those customers in the utility's service area that do not take service from the electric utility (now, the Commission is required to declare the service to be a competitive service for an identifiable customer segment or group of customers or a clearly defined geographical area within the electricity's service area if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group or in the defined geographical area at a reasonable price from one or more other providers other than the electric utility or an affiliate and the utility has lost or is reasonably likely to lose business for the service to the other provider or providers). Requires the Commission to make its determination and issue its final order declaring or refusing to declare the service to be a competitive service within 180 (now, 120) days after the date the petition is filed. Deletes provisions that, if the Commission fails to make the determination within that time results within that time period, the petition is deemed to be granted. Effective immediately.

LRB094 22013 MJR 60561 b

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 Sections 16-102, 16-111, and 16-113 as follows:

6 (220 ILCS 5/16-102)

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

10 "Alternative retail electric supplier" means every person,
11 cooperative, corporation, municipal corporation, company,
12 association, joint stock company or association, firm,
13 partnership, individual, or other entity, their lessees,
14 trustees, or receivers appointed by any court whatsoever, that
15 offers electric power or energy for sale, lease or in exchange
16 for other value received to one or more retail customers, or
17 that engages in the delivery or furnishing of electric power or
18 energy to such retail customers, and shall include, without
19 limitation, resellers, aggregators and power marketers, but
20 shall not include (i) electric utilities (or any agent of the
21 electric utility to the extent the electric utility provides
22 tariffed services to retail customers through that agent), (ii)
23 any electric cooperative or municipal system as defined in
24 Section 17-100 to the extent that the electric cooperative or
25 municipal system is serving retail customers within any area in
26 which it is or would be entitled to provide service under the
27 law in effect immediately prior to the effective date of this
28 amendatory Act of 1997, (iii) a public utility that is owned
29 and operated by any public institution of higher education of
30 this State, or a public utility that is owned by such public
31 institution of higher education and operated by any of its
32 lessees or operating agents, within any area in which it is or

1 would be entitled to provide service under the law in effect
2 immediately prior to the effective date of this amendatory Act
3 of 1997, (iv) a retail customer to the extent that customer
4 obtains its electric power and energy from that customer's own
5 cogeneration or self-generation facilities, (v) an entity that
6 owns, operates, sells, or arranges for the installation of a
7 customer's own cogeneration or self-generation facilities, but
8 only to the extent the entity is engaged in owning, selling or
9 arranging for the installation of such facility, or operating
10 the facility on behalf of such customer, provided however that
11 any such third party owner or operator of a facility built
12 after January 1, 1999, complies with the labor provisions of
13 Section 16-128(a) as though such third party were an
14 alternative retail electric supplier, or (vi) an industrial or
15 manufacturing customer that owns its own distribution
16 facilities, to the extent that the customer provides service
17 from that distribution system to a third-party contractor
18 located on the customer's premises that is integrally and
19 predominantly engaged in the customer's industrial or
20 manufacturing process; provided, that if the industrial or
21 manufacturing customer has elected delivery services, the
22 customer shall pay transition charges applicable to the
23 electric power and energy consumed by the third-party
24 contractor unless such charges are otherwise paid by the third
25 party contractor, which shall be calculated based on the usage
26 of, and the base rates or the contract rates applicable to, the
27 third-party contractor in accordance with Section 16-102.

28 "Base rates" means the rates for those tariffed services
29 that the electric utility is required to offer pursuant to
30 subsection (a) of Section 16-103 and that were identified in a
31 rate order for collection of the electric utility's base rate
32 revenue requirement, excluding (i) separate automatic rate
33 adjustment riders then in effect, (ii) special or negotiated
34 contract rates, (iii) delivery services tariffs filed pursuant
35 to Section 16-108, (iv) real-time pricing, or (v) tariffs that
36 were in effect prior to October 1, 1996 and that based charges

1 for services on an index or average of other utilities'
2 charges, but including (vi) any subsequent redesign of such
3 rates for tariffed services that is authorized by the
4 Commission after notice and hearing.

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

11 "Contract service" means (1) services, including the
12 provision of electric power and energy or other services, that
13 are provided by mutual agreement between an electric utility
14 and a retail customer that is located in the electric utility's
15 service area, provided that, delivery services shall not be a
16 contract service until such services are declared competitive
17 pursuant to Section 16-113; and also means (2) the provision of
18 electric power and energy by an electric utility to retail
19 customers outside the electric utility's service area pursuant
20 to Section 16-116. Provided, however, contract service does not
21 include electric utility services provided pursuant to (i)
22 contracts that retail customers are required to execute as a
23 condition of receiving tariffed services, or (ii) special or
24 negotiated rate contracts for electric utility services that
25 were entered into between an electric utility and a retail
26 customer prior to the effective date of this amendatory Act of
27 1997 and filed with the Commission.

28 "Delivery services" means those services provided by the
29 electric utility that are necessary in order for the
30 transmission and distribution systems to function so that
31 retail customers located in the electric utility's service area
32 can receive electric power and energy from suppliers other than
33 the electric utility, and shall include, without limitation,
34 standard metering and billing services.

35 "Electric utility" means a public utility, as defined in
36 Section 3-105 of this Act, that has a franchise, license,

1 permit or right to furnish or sell electricity to retail
2 customers within a service area.

3 "Mandatory transition period" means the period from the
4 effective date of this amendatory Act of 1997 through the date
5 on which the Commission has approved declarations of
6 competitive service, pursuant to Section 16-113, for all
7 classes of service offered in the service areas of all electric
8 utilities that, on December 31, 2005, served at least 100,000
9 customers. January 1, 2007.

10 "Municipal system" shall have the meaning set forth in
11 Section 17-100.

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

16 "Retail customer" means a single entity using electric
17 power or energy at a single premises and that (A) either (i) is
18 receiving or is eligible to receive tariffed services from an
19 electric utility, or (ii) that is served by a municipal system
20 or electric cooperative within any area in which the municipal
21 system or electric cooperative is or would be entitled to
22 provide service under the law in effect immediately prior to
23 the effective date of this amendatory Act of 1997, or (B) an
24 entity which on the effective date of this Act was receiving
25 electric service from a public utility and (i) was engaged in
26 the practice of resale and redistribution of such electricity
27 within a building prior to January 2, 1957, or (ii) was
28 providing lighting services to tenants in a multi-occupancy
29 building, but only to the extent such resale, redistribution or
30 lighting service is authorized by the electric utility's
31 tariffs that were on file with the Commission on the effective
32 date of this Act.

33 "Service area" means (i) the geographic area within which
34 an electric utility was lawfully entitled to provide electric
35 power and energy to retail customers as of the effective date
36 of this amendatory Act of 1997, and includes (ii) the location

1 of any retail customer to which the electric utility was
2 lawfully providing electric utility services on such effective
3 date.

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

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

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

17 (1) the amount of revenue that an electric utility
18 would receive from the retail customer or customers if it
19 were serving such customers' electric power and energy
20 requirements as a tariffed service based on (A) all of the
21 customers' actual usage during the 3 years ending 90 days
22 prior to the date on which such customers were first
23 eligible for delivery services pursuant to Section 16-104,
24 and (B) on (i) the base rates in effect on October 1, 1996
25 (adjusted for the reductions required by subsection (b) of
26 Section 16-111, for any reduction resulting from a rate
27 decrease under Section 16-101(b), for any restatement of
28 base rates made in conjunction with an elimination of the
29 fuel adjustment clause pursuant to subsection (b), (d), or
30 (f) of Section 9-220 and for any removal of decommissioning
31 costs from base rates pursuant to Section 16-114) and any
32 separate automatic rate adjustment riders (other than a
33 decommissioning rate as defined in Section 16-114) under
34 which the customers were receiving or, had they been
35 customers, would have received electric power and energy
36 from the electric utility during the year immediately

1 preceding the date on which such customers were first
2 eligible for delivery service pursuant to Section 16-104,
3 or (ii) to the extent applicable, any contract rates,
4 including contracts or rates for consolidated or
5 aggregated billing, under which such customers were
6 receiving electric power and energy from the electric
7 utility during such year;

8 (2) less the amount of revenue, other than revenue from
9 transition charges and decommissioning rates, that the
10 electric utility would receive from such retail customers
11 for delivery services provided by the electric utility,
12 assuming such customers were taking delivery services for
13 all of their usage, based on the delivery services tariffs
14 in effect during the year for which the transition charge
15 is being calculated and on the usage identified in
16 paragraph (1);

17 (3) less the market value for the electric power and
18 energy that the electric utility would have used to supply
19 all of such customers' electric power and energy
20 requirements, as a tariffed service, based on the usage
21 identified in paragraph (1), with such market value
22 determined in accordance with Section 16-112 of this Act;

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

29 (A) for nonresidential retail customers, an amount
30 equal to the greater of (i) 0.5 cents per kilowatt-hour
31 during the period October 1, 1999 through December 31,
32 2004, 0.6 cents per kilowatt-hour in calendar year
33 2005, and 0.9 cents per kilowatt-hour in calendar year
34 2006, multiplied in each year by the usage identified
35 in paragraph (1), or (ii) an amount equal to the
36 following percentages of the amount produced by

1 applying the applicable base rates (adjusted as
2 described in subparagraph (1)(B)) or contract rate to
3 the usage identified in paragraph (1): 8% for the
4 period October 1, 1999 through December 31, 2002, 10%
5 in calendar years 2003 and 2004, 11% in calendar year
6 2005 and 12% in calendar year 2006; and

7 (B) for residential retail customers, an amount
8 equal to the following percentages of the amount
9 produced by applying the base rates in effect on
10 October 1, 1996 (adjusted as described in subparagraph
11 (1)(B)) to the usage identified in paragraph (1): (i)
12 6% from May 1, 2002 through December 31, 2002, (ii) 7%
13 in calendar years 2003 and 2004, (iii) 8% in calendar
14 year 2005, and (iv) 10% in calendar year 2006;

15 (5) divided by the usage of such customers identified
16 in paragraph (1),
17 provided that the transition charge shall never be less than
18 zero.

19 "Unbundled service" means a component or constituent part
20 of a tariffed service which the electric utility subsequently
21 offers separately to its customers.

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

23 (220 ILCS 5/16-111)

24 Sec. 16-111. Rates and restructuring transactions during
25 mandatory transition period.

26 (a) During the mandatory transition period,
27 notwithstanding any provision of Article IX of this Act, and
28 except as provided in subsections (b), (d), (e), and (f) of
29 this Section, the Commission shall not, prior to 2008, (i)
30 initiate, authorize or order any change by way of increase
31 (other than in connection with a request for rate increase
32 which was filed after September 1, 1997 but prior to October
33 15, 1997, by an electric utility serving less than 12,500
34 customers in this State) or (ii), ~~(ii) initiate or, unless~~
35 ~~requested by the electric utility, authorize or order any~~

1 ~~change by way of decrease, restructuring or unbundling (except~~
2 ~~as provided in Section 16-109A), in the rates of any electric~~
3 ~~utility that were in effect on October 1, 1996, or (iii) in any~~
4 order approving any application for a merger pursuant to
5 Section 7-204 that was pending as of May 16, 1997, impose any
6 condition requiring any filing for an increase, decrease, or
7 change in, or other review of, an electric utility's rates or
8 enforce any such condition of any such order; provided,
9 however, that this subsection shall not prohibit the Commission
10 from:

11 (1) (blank); ~~approving the application of an electric~~
12 ~~utility to implement an alternative to rate of return~~
13 ~~regulation or a regulatory mechanism that rewards or~~
14 ~~penalizes the electric utility through adjustment of rates~~
15 ~~based on utility performance, pursuant to Section 9-244;~~

16 (2) authorizing an electric utility to eliminate its
17 fuel adjustment clause and adjust its base rate tariffs in
18 accordance with subsection (b), (d), or (f) of Section
19 9-220 of this Act, to fix its fuel adjustment factor in
20 accordance with subsection (c) of Section 9-220 of this
21 Act, or to eliminate its fuel adjustment clause in
22 accordance with subsection (e) of Section 9-220 of this
23 Act;

24 (3) ordering into effect tariffs for delivery services
25 and transition charges in accordance with Sections 16-104
26 and 16-108, for real-time pricing in accordance with
27 Section 16-107, or the options required by Section 16-110
28 and subsection (n) of 16-112, allowing a billing experiment
29 in accordance with Section 16-106, or modifying delivery
30 services tariffs in accordance with Section 16-109; or

31 (4) ordering or allowing into effect any tariff to
32 recover charges pursuant to Sections 9-201.5, 9-220.1,
33 9-221, 9-222 (except as provided in Section 9-222.1),
34 16-108, and 16-114 of this Act, Section 5-5 of the
35 Electricity Infrastructure Maintenance Fee Law, Section
36 6-5 of the Renewable Energy, Energy Efficiency, and Coal

1 Resources Development Law of 1997, and Section 13 of the
2 Energy Assistance Act.

3 After December 31, 2004, the provisions of this subsection
4 (a) shall not apply to an electric utility whose average
5 residential retail rate was less than or equal to 90% of the
6 average residential retail rate for the "Midwest Utilities", as
7 that term is defined in subsection (b) of this Section, based
8 on data reported on Form 1 to the Federal Energy Regulatory
9 Commission for calendar year 1995, and which served between
10 150,000 and 250,000 retail customers in this State on January
11 1, 1995 unless the electric utility or its holding company has
12 been acquired by or merged with an affiliate of another
13 electric utility subsequent to January 1, 2002. This exemption
14 shall be limited to this subsection (a) and shall not extend to
15 any other provisions of this Act.

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

19 (b) Notwithstanding the provisions of subsection (a), each
20 Illinois electric utility serving more than 12,500 customers in
21 Illinois shall file tariffs (i) reducing, effective August 1,
22 1998, each component of its base rates to residential retail
23 customers by 15% from the base rates in effect immediately
24 prior to January 1, 1998 and (ii) if the public utility
25 provides electric service to (A) more than 500,000 customers
26 but less than 1,000,000 customers in this State on January 1,
27 1999, reducing, effective May 1, 2002, each component of its
28 base rates to residential retail customers by an additional 5%
29 from the base rates in effect immediately prior to January 1,
30 1998, or (B) at least 1,000,000 customers in this State on
31 January 1, 1999, reducing, effective October 1, 2001, each
32 component of its base rates to residential retail customers by
33 an additional 5% from the base rates in effect immediately
34 prior to January 1, 1998. Provided, however, that (A) if an
35 electric utility's average residential retail rate is less than
36 or equal to the average residential retail rate for a group of

1 Midwest Utilities (consisting of all investor-owned electric
2 utilities with annual system peaks in excess of 1000 megawatts
3 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,
4 Missouri, Ohio, and Wisconsin), based on data reported on Form
5 1 to the Federal Energy Regulatory Commission for calendar year
6 1995, then it shall only be required to file tariffs (i)
7 reducing, effective August 1, 1998, each component of its base
8 rates to residential retail customers by 5% from the base rates
9 in effect immediately prior to January 1, 1998, (ii) reducing,
10 effective October 1, 2000, each component of its base rates to
11 residential retail customers by the lesser of 5% of the base
12 rates in effect immediately prior to January 1, 1998 or the
13 percentage by which the electric utility's average residential
14 retail rate exceeds the average residential retail rate of the
15 Midwest Utilities, based on data reported on Form 1 to the
16 Federal Energy Regulatory Commission for calendar year 1999,
17 and (iii) reducing, effective October 1, 2002, each component
18 of its base rates to residential retail customers by an
19 additional amount equal to the lesser of 5% of the base rates
20 in effect immediately prior to January 1, 1998 or the
21 percentage by which the electric utility's average residential
22 retail rate exceeds the average residential retail rate of the
23 Midwest Utilities, based on data reported on Form 1 to the
24 Federal Energy Regulatory Commission for calendar year 2001;
25 and (B) if the average residential retail rate of an electric
26 utility serving between 150,000 and 250,000 retail customers in
27 this State on January 1, 1995 is less than or equal to 90% of
28 the average residential retail rate for the Midwest Utilities,
29 based on data reported on Form 1 to the Federal Energy
30 Regulatory Commission for calendar year 1995, then it shall
31 only be required to file tariffs (i) reducing, effective August
32 1, 1998, each component of its base rates to residential retail
33 customers by 2% from the base rates in effect immediately prior
34 to January 1, 1998; (ii) reducing, effective October 1, 2000,
35 each component of its base rates to residential retail
36 customers by 2% from the base rate in effect immediately prior

1 to January 1, 1998; and (iii) reducing, effective October 1,
2 2002, each component of its base rates to residential retail
3 customers by 1% from the base rates in effect immediately prior
4 to January 1, 1998. Provided, further, that any electric
5 utility for which a decrease in base rates has been or is
6 placed into effect between October 1, 1996 and the dates
7 specified in the preceding sentences of this subsection, other
8 than pursuant to the requirements of this subsection, shall be
9 entitled to reduce the amount of any reduction or reductions in
10 its base rates required by this subsection by the amount of
11 such other decrease. The tariffs required under this subsection
12 shall be filed 45 days in advance of the effective date.
13 Notwithstanding anything to the contrary in Section 9-220 of
14 this Act, no restatement of base rates in conjunction with the
15 elimination of a fuel adjustment clause under that Section
16 shall result in a lesser decrease in base rates than customers
17 would otherwise receive under this subsection had the electric
18 utility's fuel adjustment clause not been eliminated.

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

32 Any utility reducing its base rates by 2% on August 1, 1998
33 pursuant to subsection (b) shall include the following
34 statement on its bills for residential customers from August 1
35 through December 31, 1998: "Effective August 1, 1998, your
36 rates have been reduced by 2% by the Electric Service Customer

1 Choice and Rate Relief Law of 1997 passed by the Illinois
2 General Assembly.".

3 (d) During the mandatory transition period, but not before
4 January 1, 2000, and notwithstanding the provisions of
5 subsection (a), an electric utility may request an increase in
6 its base rates if the electric utility demonstrates that the
7 2-year average of its earned rate of return on common equity,
8 calculated as its net income applicable to common stock divided
9 by the average of its beginning and ending balances of common
10 equity using data reported in the electric utility's Form 1
11 report to the Federal Energy Regulatory Commission but adjusted
12 to remove the effects of accelerated depreciation or
13 amortization or other transition or mitigation measures
14 implemented by the electric utility pursuant to subsection (g)
15 of this Section and the effect of any refund paid pursuant to
16 subsection (e) of this Section, is below the 2-year average for
17 the same 2 years of the monthly average yields of 30-year U.S.
18 Treasury bonds published by the Board of Governors of the
19 Federal Reserve System in its weekly H.15 Statistical Release
20 or successor publication. The Commission shall review the
21 electric utility's request, and may review the justness and
22 reasonableness of all rates for tariffed services, in
23 accordance with the provisions of Article IX of this Act,
24 provided that the Commission shall consider any special or
25 negotiated adjustments to the revenue requirement agreed to
26 between the electric utility and the other parties to the
27 proceeding. In setting rates under this Section, the Commission
28 shall exclude the costs and revenues that are associated with
29 competitive services and any billing or pricing experiments
30 conducted under Section 16-106.

31 (e) For the purposes of this subsection (e) all
32 calculations and comparisons shall be performed for the
33 Illinois operations of multijurisdictional utilities. During
34 the mandatory transition period, notwithstanding the
35 provisions of subsection (a), if the 2-year average of an
36 electric utility's earned rate of return on common equity,

1 calculated as its net income applicable to common stock divided
2 by the average of its beginning and ending balances of common
3 equity using data reported in the electric utility's Form 1
4 report to the Federal Energy Regulatory Commission but adjusted
5 to remove the effect of any refund paid under this subsection
6 (e), and further adjusted to include the annual amortization of
7 any difference between the consideration received by an
8 affiliated interest of the electric utility in the sale of an
9 asset which had been sold or transferred by the electric
10 utility to the affiliated interest subsequent to the effective
11 date of this amendatory Act of 1997 and the consideration for
12 which such asset had been sold or transferred to the affiliated
13 interest, with such difference to be amortized ratably from the
14 date of the sale by the affiliated interest to December 31,
15 2006, exceeds the 2-year average of the Index for the same 2
16 years by 1.5 or more percentage points, the electric utility
17 shall make refunds to customers beginning the first billing day
18 of April in the following year in the manner described in
19 paragraph (3) of this subsection. For purposes of this
20 subsection (e), the "Index" shall be the sum of (A) the average
21 for the 12 months ended September 30 of the monthly average
22 yields of 30-year U.S. Treasury bonds published by the Board of
23 Governors of the Federal Reserve System in its weekly H.15
24 Statistical Release or successor publication for each year 1998
25 through 2006, and (B) (i) 4.00 percentage points for each of
26 the 12-month periods ending September 30, 1998 through
27 September 30, 1999 or 8.00 percentage points if the electric
28 utility's average residential retail rate is less than or equal
29 to 90% of the average residential retail rate for the "Midwest
30 Utilities", as that term is defined in subsection (b) of this
31 Section, based on data reported on Form 1 to the Federal Energy
32 Regulatory Commission for calendar year 1995, and the electric
33 utility served between 150,000 and 250,000 retail customers on
34 January 1, 1995, (ii) 7.00 percentage points for each of the
35 12-month periods ending September 30, 2000 through September
36 30, 2006 if the electric utility was providing service to at

1 least 1,000,000 customers in this State on January 1, 1999, or
2 9.00 percentage points if the electric utility's average
3 residential retail rate is less than or equal to 90% of the
4 average residential retail rate for the "Midwest Utilities", as
5 that term is defined in subsection (b) of this Section, based
6 on data reported on Form 1 to the Federal Energy Regulatory
7 Commission for calendar year 1995 and the electric utility
8 served between 150,000 and 250,000 retail customers in this
9 State on January 1, 1995, (iii) 11.00 percentage points for
10 each of the 12-month periods ending September 30, 2000 through
11 September 30, 2006, but only if the electric utility's average
12 residential retail rate is less than or equal to 90% of the
13 average residential retail rate for the "Midwest Utilities", as
14 that term is defined in subsection (b) of this Section, based
15 on data reported on Form 1 to the Federal Energy Regulatory
16 Commission for calendar year 1995, the electric utility served
17 between 150,000 and 250,000 retail customers in this State on
18 January 1, 1995, and the electric utility offers delivery
19 services on or before June 1, 2000 to retail customers whose
20 annual electric energy use comprises 33% of the kilowatt hour
21 sales to that group of retail customers that are classified
22 under Division D, Groups 20 through 39 of the Standard
23 Industrial Classifications set forth in the Standard
24 Industrial Classification Manual published by the United
25 States Office of Management and Budget, excluding the kilowatt
26 hour sales to those customers that are eligible for delivery
27 services pursuant to Section 16-104(a)(1)(i), and offers
28 delivery services to its remaining retail customers classified
29 under Division D, Groups 20 through 39 on or before October 1,
30 2000, and, provided further, that the electric utility commits
31 not to petition pursuant to Section 16-108(f) for entry of an
32 order by the Commission authorizing the electric utility to
33 implement transition charges for an additional period after
34 December 31, 2006, or (iv) 5.00 percentage points for each of
35 the 12-month periods ending September 30, 2000 through
36 September 30, 2006 for all other electric utilities or 7.00

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

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

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

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

35 (i) The electric utility's excess earnings shall
36 be multiplied by the average of the beginning and

1 ending balances of the electric utility's common
2 equity for the 2-year period in which excess earnings
3 occurred.

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

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

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

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

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

32 (1) implement a reorganization, other than a merger of
33 2 or more public utilities as defined in Section 3-105 or
34 their holding companies;

35 (2) retire generating plants from service;

36 (3) sell, assign, lease or otherwise transfer assets to

1 an affiliated or unaffiliated entity and as part of such
2 transaction enter into service agreements, power purchase
3 agreements, or other agreements with the transferee;
4 provided, however, that the prices, terms and conditions of
5 any power purchase agreement must be approved or allowed
6 into effect by the Federal Energy Regulatory Commission; or

7 (4) use any accelerated cost recovery method including
8 accelerated depreciation, accelerated amortization or
9 other capital recovery methods, or record reductions to the
10 original cost of its assets.

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

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

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

35 (iii) a list of all federal approvals or approvals
36 required from departments and agencies of this State,

1 other than the Commission, that the electric utility
2 has or will obtain before implementing the
3 reorganization or transaction;

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

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

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

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

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

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

32 The Commission shall not in any subsequent proceeding or
33 otherwise, review such a reorganization or other transaction
34 authorized by this Section, but shall retain the authority to
35 allocate costs as stated in Section 16-111(i). An entity to
36 which an electric utility sells, assigns, leases or transfers

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

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

1 original cost of assets shall be deemed to be approved by the
2 Commission as though an order had been entered by the
3 Commission.

4 (i) Subsequent to the mandatory transition period, the
5 Commission, in any proceeding to establish rates and charges
6 for tariffed services offered by an electric utility, shall
7 consider only (1) the then current or projected revenues,
8 costs, investments and cost of capital directly or indirectly
9 associated with the provision of such tariffed services; (2)
10 collection of transition charges in accordance with Sections
11 16-102 and 16-108 of this Act; (3) recovery of any employee
12 transition costs as described in Section 16-128 which the
13 electric utility is continuing to incur, including recovery of
14 any unamortized portion of such costs previously incurred or
15 committed, with such costs to be equitably allocated among
16 bundled services, delivery services, and contracts with
17 alternative retail electric suppliers; and (4) recovery of the
18 costs associated with the electric utility's compliance with
19 decommissioning funding requirements; and shall not consider
20 any other revenues, costs, investments or cost of capital of
21 either the electric utility or of any affiliate of the electric
22 utility that are not associated with the provision of tariffed
23 services. In setting rates for tariffed services, the
24 Commission shall equitably allocate joint and common costs and
25 investments between the electric utility's competitive and
26 tariffed services. In determining the justness and
27 reasonableness of the electric power and energy component of an
28 electric utility's rates for tariffed services subsequent to
29 the mandatory transition period and prior to the time that the
30 provision of such electric power and energy is declared
31 competitive, the Commission shall consider the extent to which
32 the electric utility's tariffed rates for such component for
33 each customer class exceed the market value determined pursuant
34 to Section 16-112, and, if the electric power and energy
35 component of such tariffed rate exceeds the market value by
36 more than 10% for any customer class, may establish such

1 electric power and energy component at a rate equal to the
2 market value plus 10%. In any such case, the Commission may
3 also elect to extend the provisions of Section 16-111(e) for
4 any period in which the electric utility is collecting
5 transition charges, using information applicable to such
6 period.

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

32 (k) If an electric utility is selling or transferring to a
33 single buyer 5 or more generating plants located in this State
34 with a total net dependable capacity of 5000 megawatts or more
35 pursuant to subsection (g) of this Section and has obtained a
36 sale price or consideration that exceeds 200% of the book value

1 of such plants, the electric utility must provide to the
2 Governor, the President of the Illinois Senate, the Minority
3 Leader of the Illinois Senate, the Speaker of the Illinois
4 House of Representatives, and the Minority Leader of the
5 Illinois House of Representatives no later than 15 days after
6 filing its notice under subsection (g) of this Section or 5
7 days after the date on which this subsection (k) becomes law,
8 whichever is later, a written commitment in which such electric
9 utility agrees to expend \$2 billion outside the corporate
10 limits of any municipality with 1,000,000 or more inhabitants
11 within such electric utility's service area, over a 6-year
12 period beginning with the calendar year in which the notice is
13 filed, on projects, programs, and improvements within its
14 service area relating to transmission and distribution
15 including, without limitation, infrastructure expansion,
16 repair and replacement, capital investments, operations and
17 maintenance, and vegetation management.

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

20 (220 ILCS 5/16-113)

21 Sec. 16-113. Declaration of service as a competitive
22 service.

23 (a) An electric utility may, by petition, request the
24 Commission to declare a tariffed service provided by the
25 electric utility to be a competitive service. The electric
26 utility shall give notice of its petition to the public in the
27 same manner that public notice is provided for proposed general
28 increases in rates for tariffed services, in accordance with
29 rules and regulations prescribed by the Commission. The
30 Commission shall hold a hearing and ~~on the petition if a~~
31 ~~hearing is deemed necessary by the Commission. The Commission~~
32 shall declare the class of tariffed service to be a competitive
33 service ~~for some identifiable customer segment or group of~~
34 ~~customers, or some clearly defined geographical area~~ within the
35 electric utility's service area, only after the electric

1 utility demonstrates that at least 33% of the customers in the
2 electric utility's service area that are eligible to take the
3 class of tariffed service instead take service from alternative
4 retail electric suppliers, as defined in Section 16-102, and
5 that at least 3 alternative retail electric suppliers provide
6 service that is comparable to the class of tariffed service to
7 those customers in the utility's service area that do not take
8 service from the electric utility; ~~if the service or a~~
9 ~~reasonably equivalent substitute service is reasonably~~
10 ~~available to the customer segment or group or in the defined~~
11 ~~geographical area at a comparable price from one or more~~
12 ~~providers other than the electric utility or an affiliate of~~
13 ~~the electric utility, and the electric utility has lost or~~
14 ~~there is a reasonable likelihood that the electric utility will~~
15 ~~lose business for the service to the other provider or~~
16 ~~providers;~~ provided, that the Commission may not declare the
17 provision of electric power and energy to be competitive
18 pursuant to this subsection with respect to (i) any retail
19 customer or group of retail customers that is not eligible
20 pursuant to Section 16-104 to take delivery services provided
21 by the electric utility and (ii) any residential and small
22 commercial retail customers prior to the last date on which
23 such customers are required to pay transition charges. In
24 determining whether to grant or deny a petition to declare the
25 provision of electric power and energy competitive, the
26 Commission shall consider, in applying the above criteria,
27 whether there is adequate transmission capacity into the
28 service area of the petitioning electric utility to make
29 electric power and energy reasonably available to the customer
30 segment or group or in the defined geographical area from one
31 or more providers other than the electric utility or an
32 affiliate of the electric utility, in accordance with this
33 subsection. The Commission shall make its determination and
34 issue its final order declaring or refusing to declare the
35 service to be a competitive service within 180 ~~120~~ days
36 following the date that the petition is filed, ~~or otherwise the~~

1 ~~petition shall be deemed to be granted; provided, that if the~~
2 ~~petition is deemed to be granted by operation of law, the~~
3 ~~Commission shall not thereby be precluded from finding and~~
4 ~~ordering, in a subsequent proceeding initiated by the~~
5 ~~Commission, and after notice and hearing, that the service is~~
6 ~~not competitive based on the criteria set forth in this~~
7 ~~subsection.~~

8 (b) Any customer except a customer identified in subsection
9 (c) of Section 16-103 who is taking a tariffed service that is
10 declared to be a competitive service pursuant to subsection (a)
11 of this Section shall be entitled to continue to take the
12 service from the electric utility on a tariffed basis for a
13 period of 3 years following the date that the service is
14 declared competitive, or such other period as is stated in the
15 electric utility's tariff pursuant to Section 16-110. This
16 subsection shall not require the electric utility to offer or
17 provide on a tariffed basis any service to any customer (except
18 those customers identified in subsection (c) of Section 16-103)
19 that was not taking such service on a tariffed basis on the
20 date the service was declared to be competitive.

21 (c) If the Commission denies a petition to declare a
22 service to be a competitive service, or determines in a
23 separate proceeding that a service is not competitive based on
24 the criteria set forth in subsection (a), the electric utility
25 may file a new petition no earlier than 6 months following the
26 date of the Commission's order, requesting, on the basis of
27 additional or different facts and circumstances, that the
28 service be declared to be a competitive service.

29 (d) The Commission shall not deny a petition to declare a
30 service to be a competitive service, and shall not find that a
31 service is not a competitive service, on the grounds that it
32 has previously denied the petition of another electric utility
33 to declare the same or a similar service to be a competitive
34 service or has previously determined that the same or a similar
35 service provided by another electric utility is not a
36 competitive service.

1 (e) An electric utility may declare a service, other than
2 delivery services or the provision of electric power or energy,
3 to be competitive by filing with the Commission at least 14
4 days prior to the date on which the service is to become
5 competitive a notice describing the service that is being
6 declared competitive and the date on which it will become
7 competitive; provided, that any customer who is taking a
8 tariffed service that is declared to be a competitive service
9 pursuant to this subsection (e) shall be entitled to continue
10 to take the service from the electric utility on a tariffed
11 basis until the electric utility files, and the Commission
12 grants, a petition to declare the service competitive in
13 accordance with subsection (a) of this Section. The Commission
14 shall be authorized to find and order, after notice and hearing
15 in a subsequent proceeding initiated by the Commission, that
16 any service declared to be competitive pursuant to this
17 subsection (e) is not competitive in accordance with the
18 criteria set forth in subsection (a) of this Section.

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

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.