

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 16-101A, 16-102, and 16-107 as follows:

6 (220 ILCS 5/16-101A)

7 Sec. 16-101A. Legislative findings.

8 (a) The citizens and businesses of the State of Illinois
9 have been well-served by a comprehensive electrical utility
10 system which has provided safe, reliable, and affordable
11 service. The electrical utility system in the State of Illinois
12 has historically been subject to State and federal regulation,
13 aimed at assuring the citizens and businesses of the State of
14 safe, reliable, and affordable service, while at the same time
15 assuring the utility system of a return on its investment.

16 (b) Competitive forces are affecting the market for
17 electricity as a result of recent federal regulatory and
18 statutory changes and the activities of other states.
19 Competition in the electric services market may create
20 opportunities for new products and services for customers and
21 lower costs for users of electricity. Long-standing regulatory
22 relationships need to be altered to accommodate the competition
23 that could fundamentally alter the structure of the electric
24 services market.

25 (c) With the advent of increasing competition in this
26 industry, the State has a continued interest in assuring that
27 the safety, reliability, and affordability of electrical power
28 is not sacrificed to competitive pressures, and to that end,
29 intends to implement safeguards to assure that the industry
30 continues to operate the electrical system in a manner that
31 will serve the public's interest. Under the existing regulatory
32 framework, the industry has been encouraged to undertake

1 certain investments in its physical plant and personnel to
2 enhance its efficient operation, the cost of which it has been
3 permitted to pass on to consumers. The State has an interest in
4 providing the existing utilities a reasonable opportunity to
5 obtain a return on certain investments on which they depended
6 in undertaking those commitments in the first instance while,
7 at the same time, not permitting new entrants into the industry
8 to take unreasonable advantage of the investments made by the
9 formerly regulated industry.

10 (d) A competitive wholesale and retail market must benefit
11 all Illinois citizens. The Illinois Commerce Commission should
12 act to promote the development of an effectively competitive
13 electricity market that operates efficiently and is equitable
14 to all consumers. Consumer protections must be in place to
15 ensure that all customers continue to receive safe, reliable,
16 affordable, and environmentally safe electric service.

17 (e) All consumers must benefit in an equitable and timely
18 fashion from the lower costs for electricity that result from
19 retail and wholesale competition and receive sufficient
20 information to make informed choices among suppliers and
21 services. The use of renewable resources and energy efficiency
22 resources should be encouraged in competitive markets.

23 (f) The efficiency of electric markets depends both upon
24 the competitiveness of supply and upon the
25 price-responsiveness of the demand for service. Therefore, to
26 ensure the lowest total cost of service and to enhance the
27 reliability of service, all classes of the electricity
28 customers of electric utilities should have access to and be
29 able to voluntarily use real-time pricing and other
30 price-response and demand-response mechanisms.

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

32 (220 ILCS 5/16-102)

33 Sec. 16-102. Definitions. For the purposes of this Article
34 the following terms shall be defined as set forth in this
35 Section.

1 "Alternative retail electric supplier" means every person,
2 cooperative, corporation, municipal corporation, company,
3 association, joint stock company or association, firm,
4 partnership, individual, or other entity, their lessees,
5 trustees, or receivers appointed by any court whatsoever, that
6 offers electric power or energy for sale, lease or in exchange
7 for other value received to one or more retail customers, or
8 that engages in the delivery or furnishing of electric power or
9 energy to such retail customers, and shall include, without
10 limitation, resellers, aggregators and power marketers, but
11 shall not include (i) electric utilities (or any agent of the
12 electric utility to the extent the electric utility provides
13 tariffed services to retail customers through that agent), (ii)
14 any electric cooperative or municipal system as defined in
15 Section 17-100 to the extent that the electric cooperative or
16 municipal system is serving retail customers within any area in
17 which it is or would be entitled to provide service under the
18 law in effect immediately prior to the effective date of this
19 amendatory Act of 1997, (iii) a public utility that is owned
20 and operated by any public institution of higher education of
21 this State, or a public utility that is owned by such public
22 institution of higher education and operated by any of its
23 lessees or operating agents, within any area in which it is or
24 would be entitled to provide service under the law in effect
25 immediately prior to the effective date of this amendatory Act
26 of 1997, (iv) a retail customer to the extent that customer
27 obtains its electric power and energy from that customer's own
28 cogeneration or self-generation facilities, (v) an entity that
29 owns, operates, sells, or arranges for the installation of a
30 customer's own cogeneration or self-generation facilities, but
31 only to the extent the entity is engaged in owning, selling or
32 arranging for the installation of such facility, or operating
33 the facility on behalf of such customer, provided however that
34 any such third party owner or operator of a facility built
35 after January 1, 1999, complies with the labor provisions of
36 Section 16-128(a) as though such third party were an

1 alternative retail electric supplier, or (vi) an industrial or
2 manufacturing customer that owns its own distribution
3 facilities, to the extent that the customer provides service
4 from that distribution system to a third-party contractor
5 located on the customer's premises that is integrally and
6 predominantly engaged in the customer's industrial or
7 manufacturing process; provided, that if the industrial or
8 manufacturing customer has elected delivery services, the
9 customer shall pay transition charges applicable to the
10 electric power and energy consumed by the third-party
11 contractor unless such charges are otherwise paid by the third
12 party contractor, which shall be calculated based on the usage
13 of, and the base rates or the contract rates applicable to, the
14 third-party contractor in accordance with Section 16-102.

15 "Base rates" means the rates for those tariffed services
16 that the electric utility is required to offer pursuant to
17 subsection (a) of Section 16-103 and that were identified in a
18 rate order for collection of the electric utility's base rate
19 revenue requirement, excluding (i) separate automatic rate
20 adjustment riders then in effect, (ii) special or negotiated
21 contract rates, (iii) delivery services tariffs filed pursuant
22 to Section 16-108, (iv) real-time pricing, or (v) tariffs that
23 were in effect prior to October 1, 1996 and that based charges
24 for services on an index or average of other utilities'
25 charges, but including (vi) any subsequent redesign of such
26 rates for tariffed services that is authorized by the
27 Commission after notice and hearing.

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

34 "Contract service" means (1) services, including the
35 provision of electric power and energy or other services, that
36 are provided by mutual agreement between an electric utility

1 and a retail customer that is located in the electric utility's
2 service area, provided that, delivery services shall not be a
3 contract service until such services are declared competitive
4 pursuant to Section 16-113; and also means (2) the provision of
5 electric power and energy by an electric utility to retail
6 customers outside the electric utility's service area pursuant
7 to Section 16-116. Provided, however, contract service does not
8 include electric utility services provided pursuant to (i)
9 contracts that retail customers are required to execute as a
10 condition of receiving tariffed services, or (ii) special or
11 negotiated rate contracts for electric utility services that
12 were entered into between an electric utility and a retail
13 customer prior to the effective date of this amendatory Act of
14 1997 and filed with the Commission.

15 "Delivery services" means those services provided by the
16 electric utility that are necessary in order for the
17 transmission and distribution systems to function so that
18 retail customers located in the electric utility's service area
19 can receive electric power and energy from suppliers other than
20 the electric utility, and shall include, without limitation,
21 standard metering and billing services.

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

26 "Mandatory transition period" means the period from the
27 effective date of this amendatory Act of 1997 through January
28 1, 2007.

29 "Municipal system" shall have the meaning set forth in
30 Section 17-100.

31 "Real-time pricing" means tariffed retail charges for
32 delivered electric power and energy that vary ~~on an~~
33 hour-to-hour and are determined from wholesale market prices
34 using a methodology approved by the Illinois Commerce
35 Commission ~~basis for nonresidential retail customers and that~~
36 ~~vary on a periodic basis during the day for residential retail~~

1 ~~customers.~~

2 "Retail customer" means a single entity using electric
3 power or energy at a single premises and that (A) either (i) is
4 receiving or is eligible to receive tariffed services from an
5 electric utility, or (ii) that is served by a municipal system
6 or electric cooperative within any area in which the municipal
7 system or electric cooperative is or would be entitled to
8 provide service under the law in effect immediately prior to
9 the effective date of this amendatory Act of 1997, or (B) an
10 entity which on the effective date of this Act was receiving
11 electric service from a public utility and (i) was engaged in
12 the practice of resale and redistribution of such electricity
13 within a building prior to January 2, 1957, or (ii) was
14 providing lighting services to tenants in a multi-occupancy
15 building, but only to the extent such resale, redistribution or
16 lighting service is authorized by the electric utility's
17 tariffs that were on file with the Commission on the effective
18 date of this Act.

19 "Service area" means (i) the geographic area within which
20 an electric utility was lawfully entitled to provide electric
21 power and energy to retail customers as of the effective date
22 of this amendatory Act of 1997, and includes (ii) the location
23 of any retail customer to which the electric utility was
24 lawfully providing electric utility services on such effective
25 date.

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

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

34 "Transition charge" means a charge expressed in cents per
35 kilowatt-hour that is calculated for a customer or class of
36 customers as follows for each year in which an electric utility

1 is entitled to recover transition charges as provided in
2 Section 16-108:

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

30 (2) less the amount of revenue, other than revenue from
31 transition charges and decommissioning rates, that the
32 electric utility would receive from such retail customers
33 for delivery services provided by the electric utility,
34 assuming such customers were taking delivery services for
35 all of their usage, based on the delivery services tariffs
36 in effect during the year for which the transition charge

1 is being calculated and on the usage identified in
2 paragraph (1);

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

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

15 (A) for nonresidential retail customers, an amount
16 equal to the greater of (i) 0.5 cents per kilowatt-hour
17 during the period October 1, 1999 through December 31,
18 2004, 0.6 cents per kilowatt-hour in calendar year
19 2005, and 0.9 cents per kilowatt-hour in calendar year
20 2006, multiplied in each year by the usage identified
21 in paragraph (1), or (ii) an amount equal to the
22 following percentages of the amount produced by
23 applying the applicable base rates (adjusted as
24 described in subparagraph (1)(B)) or contract rate to
25 the usage identified in paragraph (1): 8% for the
26 period October 1, 1999 through December 31, 2002, 10%
27 in calendar years 2003 and 2004, 11% in calendar year
28 2005 and 12% in calendar year 2006; and

29 (B) for residential retail customers, an amount
30 equal to the following percentages of the amount
31 produced by applying the base rates in effect on
32 October 1, 1996 (adjusted as described in subparagraph
33 (1)(B)) to the usage identified in paragraph (1): (i)
34 6% from May 1, 2002 through December 31, 2002, (ii) 7%
35 in calendar years 2003 and 2004, (iii) 8% in calendar
36 year 2005, and (iv) 10% in calendar year 2006;

1 (5) divided by the usage of such customers identified
2 in paragraph (1),
3 provided that the transition charge shall never be less than
4 zero.

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

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

9 (220 ILCS 5/16-107)

10 Sec. 16-107. Real-time pricing.

11 (a) Each electric utility shall file, on or before May 1,
12 1998, a tariff or tariffs which allow nonresidential retail
13 customers in the electric utility's service area to elect
14 real-time pricing beginning October 1, 1998.

15 (b) Each electric utility shall file, on or before May 1,
16 2000, a tariff or tariffs which allow residential retail
17 customers in the electric utility's service area to elect
18 real-time pricing beginning October 1, 2000.

19 (b-5) Each electric utility shall file a tariff or tariffs
20 allowing residential retail customers in the electric
21 utility's service area to elect real-time pricing beginning
22 January 2, 2007. A customer who elects real-time pricing shall
23 remain on such rate for a minimum of 12 months. The Commission
24 may, after notice and hearing, approve the tariff or tariffs,
25 provided that the Commission finds that the potential for
26 demand reductions will result in net economic benefits to all
27 residential customers of the electric utility. In examining
28 economic benefits from demand reductions, the Commission
29 shall, at a minimum, consider the following: improvements to
30 system reliability and power quality, reduction in wholesale
31 market prices and price volatility, electric utility cost
32 avoidance and reductions, market power mitigation, and other
33 benefits of demand reductions, but only to the extent that the
34 effects of reduced demand can be demonstrated to lower the cost
35 of electricity delivered to residential customers. A tariff or

1 tariffs approved pursuant to this subsection (b-5) shall, at a
2 minimum, describe (i) the methodology for determining the
3 market price of energy to be reflected in the real-time rate
4 and (ii) the manner in which customers who elect real-time
5 pricing will be provided with ready access to hourly market
6 prices, including, but not limited to, day-ahead hourly energy
7 prices.

8 A proceeding under this subsection (b-5) may not exceed 120
9 days in length.

10 (b-10) Each electric utility providing real-time pricing
11 pursuant to subsection (b-5) shall install a meter capable of
12 recording hourly interval energy use at the service location of
13 each customer that elects real-time pricing pursuant to this
14 subsection.

15 (b-15) If the Commission issues an order pursuant to
16 subsection (b-5), the affected electric utility shall contract
17 with an entity not affiliated with the electric utility to
18 serve as a program administrator to develop and implement a
19 program to provide consumer outreach, enrollment, and
20 education concerning real-time pricing and to establish and
21 administer an information system and technical and other
22 customer assistance that is necessary to enable customers to
23 manage electricity use. The program administrator: (i) shall be
24 selected and compensated by the electric utility, subject to
25 Commission approval; (ii) shall have demonstrated technical
26 and managerial competence in the development and
27 administration of demand management programs; and (iii) may
28 develop and implement risk management, energy efficiency, and
29 other services related to energy use management for which the
30 program administrator shall be compensated by participants in
31 the program receiving such services. The electric utility shall
32 provide the program administrator with all information and
33 assistance necessary to perform the program administrator's
34 duties, including, but not limited to, customer, account, and
35 energy use data. The electric utility shall permit the program
36 administrator to include inserts in residential customer bills

1 2 times per year to assist with customer outreach and
2 enrollment.

3 The program administrator shall submit an annual report to
4 the electric utility no later than April 1 of each year
5 describing the operation and results of the program, including
6 information concerning the number and types of customers using
7 real-time pricing, changes in customers' energy use patterns,
8 an assessment of the value of the program to both participants
9 and non-participants, and recommendations concerning
10 modification of the program and the tariff or tariffs filed
11 under subsection (b-5). This report shall be filed by the
12 electric utility with the Commission within 30 days of receipt
13 and shall be available to the public on the Commission's web
14 site.

15 (b-20) The Commission shall monitor the performance of
16 programs established pursuant to subsection (b-15) and shall
17 order the termination or modification of a program if it
18 determines that the program is not, after a reasonable period
19 of time for development not to exceed 4 years, resulting in net
20 benefits to the residential customers of the electric utility.

21 (b-25) An electric utility shall be entitled to recover
22 reasonable costs incurred in complying with this Section,
23 provided that recovery of the costs is fairly apportioned among
24 its residential customers as provided in this subsection
25 (b-25). The electric utility may apportion greater costs on the
26 residential customers who elect real-time pricing, but may also
27 impose some of the costs of real-time pricing on customers who
28 do not elect real-time pricing, provided that the Commission
29 determines that the cost savings resulting from real-time
30 pricing will exceed the costs imposed on customers for
31 maintaining the program.

32 (c) The electric utility's tariff or tariffs filed pursuant
33 to this Section shall be subject to Article IX.

34 (d) This Section does not apply to any electric utility
35 providing service to 100,000 or fewer customers.

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

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.