



Adopted in House Comm. on Oct 09, 2006

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1 AMENDMENT TO SENATE BILL 1714

2 AMENDMENT NO. _____. Amend Senate Bill 1714 by replacing
3 everything after the enacting clause with the following:

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

6 (220 ILCS 5/16-102)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (220 ILCS 5/16-111)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) retire generating plants from service;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 maintenance, and vegetation management.

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

4 (220 ILCS 5/16-113)

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

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

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

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

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

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

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

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

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

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