



Rep. George Scully Jr.

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LRB094 10702 MJR 60928 a

1 AMENDMENT TO SENATE BILL 1714

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

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

7 (220 ILCS 5/16-102)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 32 (1) the amount of revenue that an electric utility
33 would receive from the retail customer or customers if it
34 were serving such customers' electric power and energy

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

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

34 (3) less the market value for the electric power and

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

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

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

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

34 (5) divided by the usage of such customers identified

1 in paragraph (1),
2 provided that the transition charge shall never be less than
3 zero.

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

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

8 (220 ILCS 5/16-111)

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

11 (a) During the mandatory transition period,
12 notwithstanding any provision of Article IX of this Act, and
13 except as provided in subsections (b), (d), (e), and (f) of
14 this Section, the Commission shall order all electric utilities
15 that, on December 31, 2005, served at least 100,000 customers
16 to file and implement tariffs to reinstate all 2006 rates
17 within 10 days after the effective date of this amendatory Act
18 of the 94th General Assembly, and the Commission shall not,
19 prior to 2010, (i) initiate, authorize or order any change by
20 way of increase (other than in connection with a request for
21 rate increase which was filed after September 1, 1997 but prior
22 to October 15, 1997, by an electric utility serving less than
23 12,500 customers in this State) or (ii), ~~(ii) initiate or,~~
24 ~~unless requested by the electric utility, authorize or order~~
25 ~~any change by way of decrease, restructuring or unbundling~~
26 ~~(except as provided in Section 16-109A), in the rates of any~~
27 ~~electric utility that were in effect on October 1, 1996, or~~
28 ~~(iii)~~ in any order approving any application for a merger
29 pursuant to Section 7-204 that was pending as of May 16, 1997,
30 impose any condition requiring any filing for an increase,
31 decrease, or change in, or other review of, an electric
32 utility's rates or enforce any such condition of any such
33 order; provided, however, that this subsection shall not

1 prohibit the Commission from:

2 (1) (blank); ~~approving the application of an electric~~
3 ~~utility to implement an alternative to rate of return~~
4 ~~regulation or a regulatory mechanism that rewards or~~
5 ~~penalizes the electric utility through adjustment of rates~~
6 ~~based on utility performance, pursuant to Section 9-244;~~

7 (2) authorizing an electric utility to eliminate its
8 fuel adjustment clause and adjust its base rate tariffs in
9 accordance with subsection (b), (d), or (f) of Section
10 9-220 of this Act, to fix its fuel adjustment factor in
11 accordance with subsection (c) of Section 9-220 of this
12 Act, or to eliminate its fuel adjustment clause in
13 accordance with subsection (e) of Section 9-220 of this
14 Act;

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

22 (4) ordering or allowing into effect any tariff to
23 recover charges pursuant to Sections 9-201.5, 9-220.1,
24 9-221, 9-222 (except as provided in Section 9-222.1),
25 16-108, and 16-114 of this Act, Section 5-5 of the
26 Electricity Infrastructure Maintenance Fee Law, Section
27 6-5 of the Renewable Energy, Energy Efficiency, and Coal
28 Resources Development Law of 1997, and Section 13 of the
29 Energy Assistance Act.

30 After December 31, 2004, the provisions of this subsection
31 (a) shall not apply to an electric utility whose average
32 residential retail rate was less than or equal to 90% of the
33 average residential retail rate for the "Midwest Utilities", as
34 that term is defined in subsection (b) of this Section, based

1 on data reported on Form 1 to the Federal Energy Regulatory
2 Commission for calendar year 1995, and which served between
3 150,000 and 250,000 retail customers in this State on January
4 1, 1995 unless the electric utility or its holding company has
5 been acquired by or merged with an affiliate of another
6 electric utility subsequent to January 1, 2002. This exemption
7 shall be limited to this subsection (a) and shall not extend to
8 any other provisions of this Act.

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

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

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

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

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

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

1 General Assembly.".

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

30 (e) For the purposes of this subsection (e) all
31 calculations and comparisons shall be performed for the
32 Illinois operations of multijurisdictional utilities. During
33 the mandatory transition period, notwithstanding the
34 provisions of subsection (a), if the 2-year average of an

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

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

1 order by the Commission authorizing the electric utility to
2 implement transition charges for an additional period after
3 December 31, 2006, or (iv) 5.00 percentage points for each of
4 the 12-month periods ending September 30, 2000 through
5 September 30, 2006 for all other electric utilities or 7.00
6 percentage points for such utilities for each of the 12-month
7 periods ending September 30, 2000 through September 30, 2006
8 for any such utility that commits not to petition pursuant to
9 Section 16-108(f) for entry of an order by the Commission
10 authorizing the electric utility to implement transition
11 charges for an additional period after December 31, 2006 or
12 11.00 percentage points for each of the 12-month periods ending
13 September 30, 2005 and September 30, 2006 for each electric
14 utility providing service to fewer than 6,500, or between
15 75,000 and 150,000, electric retail customers in this State on
16 January 1, 1995 if such utility commits not to petition
17 pursuant to Section 16-108(f) for entry of an order by the
18 Commission authorizing the electric utility to implement
19 transition charges for an additional period after December 31,
20 2006.

21 (1) For purposes of this subsection (e), "excess
22 earnings" means the difference between (A) the 2-year
23 average of the electric utility's earned rate of return on
24 common equity, less (B) the 2-year average of the sum of
25 (i) the Index applicable to each of the 2 years and (ii)
26 1.5 percentage points; provided, that "excess earnings"
27 shall never be less than zero.

28 (2) On or before March 31 of each year 2000 through
29 2007 each electric utility shall file a report with the
30 Commission showing its earned rate of return on common
31 equity, calculated in accordance with this subsection, for
32 the preceding calendar year and the average for the
33 preceding 2 calendar years.

34 (3) If an electric utility has excess earnings,

1 determined in accordance with paragraphs (1) and (2) of
2 this subsection, the refunds which the electric utility
3 shall pay to its customers beginning the first billing day
4 of April in the following year shall be calculated and
5 applied as follows:

6 (i) The electric utility's excess earnings shall
7 be multiplied by the average of the beginning and
8 ending balances of the electric utility's common
9 equity for the 2-year period in which excess earnings
10 occurred.

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

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

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

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

34 (g) During the mandatory transition period, an electric

1 utility may, without obtaining any approval of the Commission
2 other than that provided for in this subsection and
3 notwithstanding any other provision of this Act or any rule or
4 regulation of the Commission that would require such approval:

5 (1) implement a reorganization, other than a merger of
6 2 or more public utilities as defined in Section 3-105 or
7 their holding companies;

8 (2) retire generating plants from service;

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

16 (4) use any accelerated cost recovery method including
17 accelerated depreciation, accelerated amortization or
18 other capital recovery methods, or record reductions to the
19 original cost of its assets.

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

28 (i) a complete statement of the entries that the
29 electric utility will make on its books and records of
30 account to implement the proposed reorganization or
31 transaction together with a certification from an
32 independent certified public accountant that such
33 entries are in accord with generally accepted
34 accounting principles and, if the Commission has

1 previously approved guidelines for cost allocations
2 between the utility and its affiliates, a
3 certification from the chief accounting officer of the
4 utility that such entries are in accord with those cost
5 allocation guidelines;

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

10 (iii) a list of all federal approvals or approvals
11 required from departments and agencies of this State,
12 other than the Commission, that the electric utility
13 has or will obtain before implementing the
14 reorganization or transaction;

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

22 (v) if the electric utility proposes to sell,
23 assign, lease or otherwise transfer a generating plant
24 that brings the amount of net dependable generating
25 capacity transferred pursuant to this subsection to an
26 amount equal to or greater than 15% of the electric
27 utility's net dependable capacity as of the effective
28 date of this amendatory Act of 1997, and enters into a
29 power purchase agreement with the entity to which such
30 generating plant is sold, assigned, leased, or
31 otherwise transferred, the electric utility also
32 agrees, if its fuel adjustment clause has not already
33 been eliminated, to eliminate its fuel adjustment
34 clause in accordance with subsection (b) of Section

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

19 (vi) In addition, if the electric utility proposes
20 to sell, assign, or lease, (A) either (1) an amount of
21 generating plant that brings the amount of net
22 dependable generating capacity transferred pursuant to
23 this subsection to an amount equal to or greater than
24 15% of its net dependable capacity on the effective
25 date of this amendatory Act of 1997, or (2) one or more
26 generating plants with a total net dependable capacity
27 of 1100 megawatts, or (B) transmission and
28 distribution facilities that either (1) bring the
29 amount of transmission and distribution facilities
30 transferred pursuant to this subsection to an amount
31 equal to or greater than 15% of the electric utility's
32 total depreciated original cost investment in such
33 facilities, or (2) represent an investment of
34 \$25,000,000 in terms of total depreciated original

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

1 Section.

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

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

34 (h) During the mandatory transition period, the Commission

1 shall not establish or use any rates of depreciation, which for
2 purposes of this subsection shall include amortization, for any
3 electric utility other than those established pursuant to
4 subsection (c) of Section 5-104 of this Act or utilized
5 pursuant to subsection (g) of this Section. Provided, however,
6 that in any proceeding to review an electric utility's rates
7 for tariffed services pursuant to Section 9-201, 9-202, 9-250
8 or 16-111(d) of this Act, the Commission may establish new
9 rates of depreciation for the electric utility in the same
10 manner provided in subsection (d) of Section 5-104 of this Act.
11 An electric utility implementing an accelerated cost recovery
12 method including accelerated depreciation, accelerated
13 amortization or other capital recovery methods, or recording
14 reductions to the original cost of its assets, pursuant to
15 subsection (g) of this Section, shall file a statement with the
16 Commission describing the accelerated cost recovery method to
17 be implemented or the reduction in the original cost of its
18 assets to be recorded. Upon the filing of such statement, the
19 accelerated cost recovery method or the reduction in the
20 original cost of assets shall be deemed to be approved by the
21 Commission as though an order had been entered by the
22 Commission.

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

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

28 (j) During the mandatory transition period, an electric
29 utility may elect to transfer to a non-operating income account
30 under the Commission's Uniform System of Accounts either or
31 both of (i) an amount of unamortized investment tax credit that
32 is in addition to the ratable amount which is credited to the
33 electric utility's operating income account for the year in
34 accordance with Section 46(f)(2) of the federal Internal

1 Revenue Code of 1986, as in effect prior to P.L. 101-508, or
2 (ii) "excess tax reserves", as that term is defined in Section
3 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided
4 that (A) the amount transferred may not exceed the amount of
5 the electric utility's assets that were created pursuant to
6 Statement of Financial Accounting Standards No. 71 which the
7 electric utility has written off during the mandatory
8 transition period, and (B) the transfer shall not be effective
9 until approved by the Internal Revenue Service. An electric
10 utility electing to make such a transfer shall file a statement
11 with the Commission stating the amount and timing of the
12 transfer for which it intends to request approval of the
13 Internal Revenue Service, along with a copy of its proposed
14 request to the Internal Revenue Service for a ruling. The
15 Commission shall issue an order within 14 days after the
16 electric utility's filing approving, subject to receipt of
17 approval from the Internal Revenue Service, the proposed
18 transfer.

19 (k) If an electric utility is selling or transferring to a
20 single buyer 5 or more generating plants located in this State
21 with a total net dependable capacity of 5000 megawatts or more
22 pursuant to subsection (g) of this Section and has obtained a
23 sale price or consideration that exceeds 200% of the book value
24 of such plants, the electric utility must provide to the
25 Governor, the President of the Illinois Senate, the Minority
26 Leader of the Illinois Senate, the Speaker of the Illinois
27 House of Representatives, and the Minority Leader of the
28 Illinois House of Representatives no later than 15 days after
29 filing its notice under subsection (g) of this Section or 5
30 days after the date on which this subsection (k) becomes law,
31 whichever is later, a written commitment in which such electric
32 utility agrees to expend \$2 billion outside the corporate
33 limits of any municipality with 1,000,000 or more inhabitants
34 within such electric utility's service area, over a 6-year

1 period beginning with the calendar year in which the notice is
2 filed, on projects, programs, and improvements within its
3 service area relating to transmission and distribution
4 including, without limitation, infrastructure expansion,
5 repair and replacement, capital investments, operations and
6 maintenance, and vegetation management.

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

9 (220 ILCS 5/16-113)

10 Sec. 16-113. Declaration of service as a competitive
11 service.

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

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

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

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

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

30 (e) An electric utility may declare a service, other than
31 delivery services or the provision of electric power or energy,
32 to be competitive by filing with the Commission at least 14
33 days prior to the date on which the service is to become
34 competitive a notice describing the service that is being

1 declared competitive and the date on which it will become
2 competitive; provided, that any customer who is taking a
3 tariffed service that is declared to be a competitive service
4 pursuant to this subsection (e) shall be entitled to continue
5 to take the service from the electric utility on a tariffed
6 basis until the electric utility files, and the Commission
7 grants, a petition to declare the service competitive in
8 accordance with subsection (a) of this Section. The Commission
9 shall be authorized to find and order, after notice and hearing
10 in a subsequent proceeding initiated by the Commission, that
11 any service declared to be competitive pursuant to this
12 subsection (e) is not competitive in accordance with the
13 criteria set forth in subsection (a) of this Section.

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

15 Section 99. Effective date. This Act takes effect upon
16 becoming law."