



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB0891

Introduced 2/7/2007, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

See Index

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

LRB095 03638 MJR 23663 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

6 (220 ILCS 5/16-102)

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

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

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

1 located on the customer's premises that is integrally and
2 predominantly engaged in the customer's industrial or
3 manufacturing process; provided, that if the industrial or
4 manufacturing customer has elected delivery services, the
5 customer shall pay transition charges applicable to the
6 electric power and energy consumed by the third-party
7 contractor unless such charges are otherwise paid by the third
8 party contractor, which shall be calculated based on the usage
9 of, and the base rates or the contract rates applicable to, the
10 third-party contractor in accordance with Section 16-102.

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

24 "Competitive service" includes (i) any service that has
25 been declared to be competitive pursuant to Section 16-113 of
26 this Act, (ii) contract service, and (iii) services, other than

1 tariffed services, that are related to, but not necessary for,
2 the provision of electric power and energy or delivery
3 services.

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

21 "Delivery services" means those services provided by the
22 electric utility that are necessary in order for the
23 transmission and distribution systems to function so that
24 retail customers located in the electric utility's service area
25 can receive electric power and energy from suppliers other than
26 the electric utility, and shall include, without limitation,

1 standard metering and billing services.

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

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

13 "Municipal system" shall have the meaning set forth in
14 Section 17-100.

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

19 "Retail customer" means a single entity using electric
20 power or energy at a single premises and that (A) either (i) is
21 receiving or is eligible to receive tariffed services from an
22 electric utility, or (ii) that is served by a municipal system
23 or electric cooperative within any area in which the municipal
24 system or electric cooperative is or would be entitled to
25 provide service under the law in effect immediately prior to
26 the effective date of this amendatory Act of 1997, or (B) an

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

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

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

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

25 "Transition charge" means a charge expressed in cents per
26 kilowatt-hour that is calculated for a customer or class of

1 customers as follows for each year in which an electric utility
2 is entitled to recover transition charges as provided in
3 Section 16-108:

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

1 including contracts or rates for consolidated or
2 aggregated billing, under which such customers were
3 receiving electric power and energy from the electric
4 utility during such year;

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

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

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

26 (A) for nonresidential retail customers, an amount

1 equal to the greater of (i) 0.5 cents per kilowatt-hour
2 during the period October 1, 1999 through December 31,
3 2004, 0.6 cents per kilowatt-hour in calendar year
4 2005, and 0.9 cents per kilowatt-hour in calendar year
5 2006, multiplied in each year by the usage identified
6 in paragraph (1), or (ii) an amount equal to the
7 following percentages of the amount produced by
8 applying the applicable base rates (adjusted as
9 described in subparagraph (1)(B)) or contract rate to
10 the usage identified in paragraph (1): 8% for the
11 period October 1, 1999 through December 31, 2002, 10%
12 in calendar years 2003 and 2004, 11% in calendar year
13 2005 and 12% in calendar year 2006; and

14 (B) for residential retail customers, an amount
15 equal to the following percentages of the amount
16 produced by applying the base rates in effect on
17 October 1, 1996 (adjusted as described in subparagraph
18 (1)(B)) to the usage identified in paragraph (1): (i)
19 6% from May 1, 2002 through December 31, 2002, (ii) 7%
20 in calendar years 2003 and 2004, (iii) 8% in calendar
21 year 2005, and (iv) 10% in calendar year 2006;

22 (5) divided by the usage of such customers identified
23 in paragraph (1),
24 provided that the transition charge shall never be less than
25 zero.

26 "Unbundled service" means a component or constituent part

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

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

4 (220 ILCS 5/16-111)

5 Sec. 16-111. Rates and restructuring transactions during
6 mandatory transition period.

7 (a) During the mandatory transition period,
8 notwithstanding any provision of Article IX of this Act, and
9 except as provided in subsections (b), (d), (e), and (f) of
10 this Section, the Commission shall not, prior to 2008, (i)
11 initiate, authorize or order any change by way of increase
12 (other than in connection with a request for rate increase
13 which was filed after September 1, 1997 but prior to October
14 15, 1997, by an electric utility serving less than 12,500
15 customers in this State) or (ii), ~~(ii) initiate or, unless~~
16 ~~requested by the electric utility, authorize or order any~~
17 ~~change by way of decrease, restructuring or unbundling (except~~
18 ~~as provided in Section 16-109A), in the rates of any electric~~
19 ~~utility that were in effect on October 1, 1996, or (iii) in any~~
20 order approving any application for a merger pursuant to
21 Section 7-204 that was pending as of May 16, 1997, impose any
22 condition requiring any filing for an increase, decrease, or
23 change in, or other review of, an electric utility's rates or
24 enforce any such condition of any such order; provided,
25 however, that this subsection shall not prohibit the Commission

1 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

1 6-5 of the Renewable Energy, Energy Efficiency, and Coal
2 Resources Development Law of 1997, and Section 13 of the
3 Energy Assistance Act.

4 After December 31, 2004, the provisions of this subsection
5 (a) shall not apply to an electric utility whose average
6 residential retail rate was 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 which served between
11 150,000 and 250,000 retail customers in this State on January
12 1, 1995 unless the electric utility or its holding company has
13 been acquired by or merged with an affiliate of another
14 electric utility subsequent to January 1, 2002. This exemption
15 shall be limited to this subsection (a) and shall not extend to
16 any other provisions of this Act.

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

20 (b) Notwithstanding the provisions of subsection (a), each
21 Illinois electric utility serving more than 12,500 customers in
22 Illinois shall file tariffs (i) reducing, effective August 1,
23 1998, each component of its base rates to residential retail
24 customers by 15% from the base rates in effect immediately
25 prior to January 1, 1998 and (ii) if the public utility
26 provides electric service to (A) more than 500,000 customers

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

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

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

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

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

8 (d) During the mandatory transition period, but not before
9 January 1, 2000, and notwithstanding the provisions of
10 subsection (a), an electric utility may request an increase in
11 its base rates if the electric utility demonstrates that the
12 2-year average of its earned rate of return on common equity,
13 calculated as its net income applicable to common stock divided
14 by the average of its beginning and ending balances of common
15 equity using data reported in the electric utility's Form 1
16 report to the Federal Energy Regulatory Commission but adjusted
17 to remove the effects of accelerated depreciation or
18 amortization or other transition or mitigation measures
19 implemented by the electric utility pursuant to subsection (g)
20 of this Section and the effect of any refund paid pursuant to
21 subsection (e) of this Section, is below the 2-year average for
22 the same 2 years of the monthly average yields of 30-year U.S.
23 Treasury bonds published by the Board of Governors of the
24 Federal Reserve System in its weekly H.15 Statistical Release
25 or successor publication. The Commission shall review the
26 electric utility's request, and may review the justness and

1 reasonableness of all rates for tariffed services, in
2 accordance with the provisions of Article IX of this Act,
3 provided that the Commission shall consider any special or
4 negotiated adjustments to the revenue requirement agreed to
5 between the electric utility and the other parties to the
6 proceeding. In setting rates under this Section, the Commission
7 shall exclude the costs and revenues that are associated with
8 competitive services and any billing or pricing experiments
9 conducted under Section 16-106.

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

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

1 9.00 percentage points if the electric utility's average
2 residential retail rate is less than or equal to 90% of the
3 average residential retail rate for the "Midwest Utilities", as
4 that term is defined in subsection (b) of this Section, based
5 on data reported on Form 1 to the Federal Energy Regulatory
6 Commission for calendar year 1995 and the electric utility
7 served between 150,000 and 250,000 retail customers in this
8 State on January 1, 1995, (iii) 11.00 percentage points for
9 each of the 12-month periods ending September 30, 2000 through
10 September 30, 2006, but only if the electric utility's average
11 residential retail rate is less than or equal to 90% of the
12 average residential retail rate for the "Midwest Utilities", as
13 that term is defined in subsection (b) of this Section, based
14 on data reported on Form 1 to the Federal Energy Regulatory
15 Commission for calendar year 1995, the electric utility served
16 between 150,000 and 250,000 retail customers in this State on
17 January 1, 1995, and the electric utility offers delivery
18 services on or before June 1, 2000 to retail customers whose
19 annual electric energy use comprises 33% of the kilowatt hour
20 sales to that group of retail customers that are classified
21 under Division D, Groups 20 through 39 of the Standard
22 Industrial Classifications set forth in the Standard
23 Industrial Classification Manual published by the United
24 States Office of Management and Budget, excluding the kilowatt
25 hour sales to those customers that are eligible for delivery
26 services pursuant to Section 16-104(a)(1)(i), and offers

1 delivery services to its remaining retail customers classified
2 under Division D, Groups 20 through 39 on or before October 1,
3 2000, and, provided further, that the electric utility commits
4 not to petition pursuant to Section 16-108(f) for entry of an
5 order by the Commission authorizing the electric utility to
6 implement transition charges for an additional period after
7 December 31, 2006, or (iv) 5.00 percentage points for each of
8 the 12-month periods ending September 30, 2000 through
9 September 30, 2006 for all other electric utilities or 7.00
10 percentage points for such utilities for each of the 12-month
11 periods ending September 30, 2000 through September 30, 2006
12 for any such utility that commits not to petition pursuant to
13 Section 16-108(f) for entry of an order by the Commission
14 authorizing the electric utility to implement transition
15 charges for an additional period after December 31, 2006 or
16 11.00 percentage points for each of the 12-month periods ending
17 September 30, 2005 and September 30, 2006 for each electric
18 utility providing service to fewer than 6,500, or between
19 75,000 and 150,000, electric retail customers in this State on
20 January 1, 1995 if such utility commits not to petition
21 pursuant to Section 16-108(f) for entry of an order by the
22 Commission authorizing the electric utility to implement
23 transition charges for an additional period after December 31,
24 2006.

25 (1) For purposes of this subsection (e), "excess
26 earnings" means the difference between (A) the 2-year

1 average of the electric utility's earned rate of return on
2 common equity, less (B) the 2-year average of the sum of
3 (i) the Index applicable to each of the 2 years and (ii)
4 1.5 percentage points; provided, that "excess earnings"
5 shall never be less than zero.

6 (2) On or before March 31 of each year 2000 through
7 2007 each electric utility shall file a report with the
8 Commission showing its earned rate of return on common
9 equity, calculated in accordance with this subsection, for
10 the preceding calendar year and the average for the
11 preceding 2 calendar years.

12 (3) If an electric utility has excess earnings,
13 determined in accordance with paragraphs (1) and (2) of
14 this subsection, the refunds which the electric utility
15 shall pay to its customers beginning the first billing day
16 of April in the following year shall be calculated and
17 applied as follows:

18 (i) The electric utility's excess earnings shall
19 be multiplied by the average of the beginning and
20 ending balances of the electric utility's common
21 equity for the 2-year period in which excess earnings
22 occurred.

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

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

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

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

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

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

1 their holding companies;

2 (2) retire generating plants from service;

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

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

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

22 (i) a complete statement of the entries that the
23 electric utility will make on its books and records of
24 account to implement the proposed reorganization or
25 transaction together with a certification from an
26 independent certified public accountant that such

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

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

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

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

24 (v) if the electric utility proposes to sell,
25 assign, lease or otherwise transfer a generating plant
26 that brings the amount of net dependable generating

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

1 limit to be adjusted each year thereafter by the Gross
2 Domestic Product Implicit Price Deflator.

3 (vi) In addition, if the electric utility proposes
4 to sell, assign, or lease, (A) either (1) an amount of
5 generating plant that brings the amount of net
6 dependable generating capacity transferred pursuant to
7 this subsection to an amount equal to or greater than
8 15% of its net dependable capacity on the effective
9 date of this amendatory Act of 1997, or (2) one or more
10 generating plants with a total net dependable capacity
11 of 1100 megawatts, or (B) transmission and
12 distribution facilities that either (1) bring the
13 amount of transmission and distribution facilities
14 transferred pursuant to this subsection to an amount
15 equal to or greater than 15% of the electric utility's
16 total depreciated original cost investment in such
17 facilities, or (2) represent an investment of
18 \$25,000,000 in terms of total depreciated original
19 cost, the electric utility shall provide, in addition
20 to the information listed in subparagraphs (i) through
21 (v), the following information: (A) a description of
22 how the electric utility will meet its service
23 obligations under this Act in a safe and reliable
24 manner and (B) the electric utility's projected earned
25 rate of return on common equity, calculated in
26 accordance with subsection (d) of this Section, for

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

1 this subsection (g) is intended to exempt the transactions
2 hereunder from the operation of the federal or State antitrust
3 laws. Nothing in this subsection (g) shall require an electric
4 utility to use the procedures specified in this subsection for
5 any of the transactions specified herein. Any other procedure
6 available under this Act may, at the electric utility's
7 election, be used for any such transaction.

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

1 accelerated cost recovery method or the reduction in the
2 original cost of assets shall be deemed to be approved by the
3 Commission as though an order had been entered by the
4 Commission.

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

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

18 (j) During the mandatory transition period, an electric
19 utility may elect to transfer to a non-operating income account
20 under the Commission's Uniform System of Accounts either or
21 both of (i) an amount of unamortized investment tax credit that
22 is in addition to the ratable amount which is credited to the
23 electric utility's operating income account for the year in
24 accordance with Section 46(f)(2) of the federal Internal
25 Revenue Code of 1986, as in effect prior to P.L. 101-508, or
26 (ii) "excess tax reserves", as that term is defined in Section

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

17 (k) If an electric utility is selling or transferring to a
18 single buyer 5 or more generating plants located in this State
19 with a total net dependable capacity of 5000 megawatts or more
20 pursuant to subsection (g) of this Section and has obtained a
21 sale price or consideration that exceeds 200% of the book value
22 of such plants, the electric utility must provide to the
23 Governor, the President of the Illinois Senate, the Minority
24 Leader of the Illinois Senate, the Speaker of the Illinois
25 House of Representatives, and the Minority Leader of the
26 Illinois House of Representatives no later than 15 days after

1 filing its notice under subsection (g) of this Section or 5
2 days after the date on which this subsection (k) becomes law,
3 whichever is later, a written commitment in which such electric
4 utility agrees to expend \$2 billion outside the corporate
5 limits of any municipality with 1,000,000 or more inhabitants
6 within such electric utility's service area, over a 6-year
7 period beginning with the calendar year in which the notice is
8 filed, on projects, programs, and improvements within its
9 service area relating to transmission and distribution
10 including, without limitation, infrastructure expansion,
11 repair and replacement, capital investments, operations and
12 maintenance, and vegetation management.

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

15 (220 ILCS 5/16-113)

16 Sec. 16-113. Declaration of service as a competitive
17 service.

18 (a) An electric utility may, by petition, request the
19 Commission to declare a tariffed service provided by the
20 electric utility to be a competitive service. The electric
21 utility shall give notice of its petition to the public in the
22 same manner that public notice is provided for proposed general
23 increases in rates for tariffed services, in accordance with
24 rules and regulations prescribed by the Commission. The
25 Commission shall hold a hearing and ~~on the petition if a~~

1 ~~hearing is deemed necessary by the Commission. The Commission~~
2 shall declare the class of tariffed service to be a competitive
3 service ~~for some identifiable customer segment or group of~~
4 ~~customers, or some clearly defined geographical area~~ within the
5 electric utility's service area, only after the electric
6 utility demonstrates that at least 33% of the customers in the
7 electric utility's service area that are eligible to take the
8 class of tariffed service instead take service from alternative
9 retail electric suppliers, as defined in Section 16-102, and
10 that at least 3 alternative retail electric suppliers provide
11 service that is comparable to the class of tariffed service to
12 those customers in the utility's service area that do not take
13 service from the electric utility; if the service or a
14 ~~reasonably equivalent substitute service is reasonably~~
15 ~~available to the customer segment or group or in the defined~~
16 ~~geographical area at a comparable price from one or more~~
17 ~~providers other than the electric utility or an affiliate of~~
18 ~~the electric utility, and the electric utility has lost or~~
19 ~~there is a reasonable likelihood that the electric utility will~~
20 ~~lose business for the service to the other provider or~~
21 ~~providers;~~ provided, that the Commission may not declare the
22 provision of electric power and energy to be competitive
23 pursuant to this subsection with respect to (i) any retail
24 customer or group of retail customers that is not eligible
25 pursuant to Section 16-104 to take delivery services provided
26 by the electric utility and (ii) any residential and small

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

23 (b) Any customer except a customer identified in subsection
24 (c) of Section 16-103 who is taking a tariffed service that is
25 declared to be a competitive service pursuant to subsection (a)
26 of this Section shall be entitled to continue to take the

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

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

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

26 (e) An electric utility may declare a service, other than

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

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

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

1 INDEX

2 Statutes amended in order of appearance

3 220 ILCS 5/16-102

4 220 ILCS 5/16-111

5 220 ILCS 5/16-113