



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1750

Introduced 2/23/2007, by Rep. George Scully, Jr. - John E. Bradley - Robert F. Flider - Lisa M. Dugan - Daniel V. Beiser, et al.

SYNOPSIS AS INTRODUCED:

See Index

Amends the Electric Service Customer Choice and Rate Relief Law of 1997 in the Public Utilities Act. Changes the definition of "mandatory transition period" to include the period from the effective date 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 in Illinois. Requires the Commission to order certain utilities to file and implement tariffs to reinstate all rates charged to the electric utilities' customers on December 31, 2006, within 10 days after the effective date. Requires the Commission to order the electric utilities to refund to the utilities' residential customers any amounts charged to such residential customers, from January 1, 2007 until 10 days after the effective date that exceed the rates charged to the electric utilities' residential customers on December 31, 2006. Provides that the refund must be issued within 30 days after the effective date and shall include interest on the full amount of the refund, at the same interest rate the Commission requires utilities to pay on customer deposits. Prohibits the Commission from taking certain actions prior to 2010 with respect to (i) initiating, authorizing, or ordering any change by way of increase or (ii) in approving an application for a merger, imposing a condition requiring any filing for an increase, decrease, or change in or other review of a utility's rates or enforcing such a condition. Makes other changes. Effective immediately.

LRB095 10948 MJR 31575 b

FISCAL NOTE ACT
MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

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
7 December 16, 1997 (the effective date of Public Act 90-561)
8 ~~this amendatory Act of 1997~~ through January 1, 2007 and from
9 the effective date of this amendatory Act of the 95th General
10 Assembly through the date on which the Commission has approved
11 declarations of competitive service, pursuant to Section
12 16-113, for all classes of service offered in the service areas
13 of all electric utilities that, on December 31, 2005, served at
14 least 100,000 customers in Illinois.

15 "Municipal system" shall have the meaning set forth in
16 Section 17-100.

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

21 "Retail customer" means a single entity using electric
22 power or energy at a single premises and that (A) either (i) is
23 receiving or is eligible to receive tariffed services from an
24 electric utility, or (ii) that is served by a municipal system
25 or electric cooperative within any area in which the municipal
26 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.

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

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

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

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

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

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

1 "mitigation factor":

2 (A) for nonresidential retail customers, an amount
3 equal to the greater of (i) 0.5 cents per kilowatt-hour
4 during the period October 1, 1999 through December 31,
5 2004, 0.6 cents per kilowatt-hour in calendar year
6 2005, and 0.9 cents per kilowatt-hour in calendar year
7 2006, multiplied in each year by the usage identified
8 in paragraph (1), or (ii) an amount equal to the
9 following percentages of the amount produced by
10 applying the applicable base rates (adjusted as
11 described in subparagraph (1)(B)) or contract rate to
12 the usage identified in paragraph (1): 8% for the
13 period October 1, 1999 through December 31, 2002, 10%
14 in calendar years 2003 and 2004, 11% in calendar year
15 2005 and 12% in calendar year 2006; and

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

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

1 zero.

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

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

6 (220 ILCS 5/16-111)

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

9 (a) During the mandatory transition period,
10 notwithstanding any provision of Article IX of this Act, and
11 except as provided in subsections (b), (d), (e), and (f) of
12 this Section, the Commission shall order all electric utilities
13 that, on December 31, 2005, served at least 100,000 customers
14 in Illinois to file and implement tariffs (A) to reinstate all
15 rates charged to the electric utilities' customers on December
16 31, 2006, within 10 days after the effective date of this
17 amendatory Act of the 95th General Assembly and (B) to refund
18 to the utilities' residential customers any amounts charged to
19 such residential customers, from January 1, 2007 until 10 days
20 after the effective date of this amendatory Act of the 95th
21 General Assembly, that exceed the rates charged to the electric
22 utilities' residential customers on December 31, 2006. This
23 refund must be issued within 30 days after the effective date
24 of this amendatory Act of the 95th General Assembly and shall
25 include interest on the full amount of the refund, at the same

1 interest rate the Commission requires utilities to pay on
2 customer deposits. After electric rates are reinstated in
3 accordance with this subsection (a), the Commission shall not,
4 prior to 2010, (i) initiate, authorize or order any change by
5 way of increase to those components of the reinstated rates
6 that reflect the cost of electric energy (other than in
7 connection with a request for rate increase which was filed
8 after September 1, 1997 but prior to October 15, 1997, by an
9 electric utility serving less than 12,500 customers in this
10 State) or (ii), ~~(ii) initiate or, unless requested by the~~
11 ~~electric utility, authorize or order any change by way of~~
12 ~~decrease, restructuring or unbundling (except as provided in~~
13 ~~Section 16-109A), in the rates of any electric utility that~~
14 ~~were in effect on October 1, 1996, or (iii) in any order~~
15 approving any application for a merger pursuant to Section
16 7-204 that was pending as of May 16, 1997, impose any condition
17 requiring any filing for an increase, decrease, or change in,
18 or other review of, an electric utility's rates or enforce any
19 such condition of any such order. Provided; ~~provided,~~ however,
20 that this subsection shall not prohibit the Commission from:

21 (1) (blank); ~~approving the application of an electric~~
22 ~~utility to implement an alternative to rate of return~~
23 ~~regulation or a regulatory mechanism that rewards or~~
24 ~~penalizes the electric utility through adjustment of rates~~
25 ~~based on utility performance, pursuant to Section 9-244;~~

26 (2) authorizing an electric utility to eliminate its

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

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

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

23 After December 31, 2004, the provisions of this subsection
24 (a) shall not apply to an electric utility whose average
25 residential retail rate was less than or equal to 90% of the
26 average residential retail rate for the "Midwest Utilities", as

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

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

13 (b) Notwithstanding the provisions of subsection (a), each
14 Illinois electric utility serving more than 12,500 customers in
15 Illinois shall file tariffs (i) reducing, effective August 1,
16 1998, each component of its base rates to residential retail
17 customers by 15% from the base rates in effect immediately
18 prior to January 1, 1998 and (ii) if the public utility
19 provides electric service to (A) more than 500,000 customers
20 but less than 1,000,000 customers in this State on January 1,
21 1999, reducing, effective May 1, 2002, each component of its
22 base rates to residential retail customers by an additional 5%
23 from the base rates in effect immediately prior to January 1,
24 1998, or (B) at least 1,000,000 customers in this State on
25 January 1, 1999, reducing, effective October 1, 2001, each
26 component of its base rates to residential retail customers by

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

1 Midwest Utilities, based on data reported on Form 1 to the
2 Federal Energy Regulatory Commission for calendar year 2001;
3 and (B) if the average residential retail rate of an electric
4 utility serving between 150,000 and 250,000 retail customers in
5 this State on January 1, 1995 is less than or equal to 90% of
6 the average residential retail rate for the Midwest Utilities,
7 based on data reported on Form 1 to the Federal Energy
8 Regulatory Commission for calendar year 1995, then it shall
9 only be required to file tariffs (i) reducing, effective August
10 1, 1998, each component of its base rates to residential retail
11 customers by 2% from the base rates in effect immediately prior
12 to January 1, 1998; (ii) reducing, effective October 1, 2000,
13 each component of its base rates to residential retail
14 customers by 2% from the base rate in effect immediately prior
15 to January 1, 1998; and (iii) reducing, effective October 1,
16 2002, each component of its base rates to residential retail
17 customers by 1% from the base rates in effect immediately prior
18 to January 1, 1998. Provided, further, that any electric
19 utility for which a decrease in base rates has been or is
20 placed into effect between October 1, 1996 and the dates
21 specified in the preceding sentences of this subsection, other
22 than pursuant to the requirements of this subsection, shall be
23 entitled to reduce the amount of any reduction or reductions in
24 its base rates required by this subsection by the amount of
25 such other decrease. The tariffs required under this subsection
26 shall be filed 45 days in advance of the effective date.

1 Notwithstanding anything to the contrary in Section 9-220 of
2 this Act, no restatement of base rates in conjunction with the
3 elimination of a fuel adjustment clause under that Section
4 shall result in a lesser decrease in base rates than customers
5 would otherwise receive under this subsection had the electric
6 utility's fuel adjustment clause not been eliminated.

7 (c) Any utility reducing its base rates by 15% on August 1,
8 1998 pursuant to subsection (b) shall include the following
9 statement on its bills for residential customers from August 1
10 through December 31, 1998: "Effective August 1, 1998, your
11 rates have been reduced by 15% by the Electric Service Customer
12 Choice and Rate Relief Law of 1997 passed by the Illinois
13 General Assembly.". Any utility reducing its base rates by 5%
14 on August 1, 1998, pursuant to subsection (b) shall include the
15 following statement on its bills for residential customers from
16 August 1 through December 31, 1998: "Effective August 1, 1998,
17 your rates have been reduced by 5% by the Electric Service
18 Customer Choice and Rate Relief Law of 1997 passed by the
19 Illinois General Assembly.".

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

1 (d) During the mandatory transition period, but not before
2 January 1, 2010 ~~2000~~, ~~and notwithstanding the provisions of~~
3 ~~subsection (a)~~, an electric utility may request an increase in
4 its base rates if the electric utility demonstrates that the
5 2-year average of its earned rate of return on common equity,
6 calculated as its net income applicable to common stock divided
7 by the average of its beginning and ending balances of common
8 equity using data reported in the electric utility's Form 1
9 report to the Federal Energy Regulatory Commission but adjusted
10 to remove the effects of accelerated depreciation or
11 amortization or other transition or mitigation measures
12 implemented by the electric utility pursuant to subsection (g)
13 of this Section and the effect of any refund paid pursuant to
14 subsection (e) of this Section, is below the 2-year average for
15 the same 2 years of the monthly average yields of 30-year U.S.
16 Treasury bonds published by the Board of Governors of the
17 Federal Reserve System in its weekly H.15 Statistical Release
18 or successor publication. The Commission shall review the
19 electric utility's request, and may review the justness and
20 reasonableness of all rates for tariffed services, in
21 accordance with the provisions of Article IX of this Act,
22 provided that the Commission shall consider any special or
23 negotiated adjustments to the revenue requirement agreed to
24 between the electric utility and the other parties to the
25 proceeding. In setting rates under this Section, the Commission
26 shall exclude the costs and revenues that are associated with

1 competitive services and any billing or pricing experiments
2 conducted under Section 16-106.

3 (e) For the purposes of this subsection (e) all
4 calculations and comparisons shall be performed for the
5 Illinois operations of multijurisdictional utilities. During
6 the mandatory transition period, notwithstanding the
7 provisions of subsection (a), if the 2-year average of an
8 electric utility's earned rate of return on common equity,
9 calculated as its net income applicable to common stock divided
10 by the average of its beginning and ending balances of common
11 equity using data reported in the electric utility's Form 1
12 report to the Federal Energy Regulatory Commission but adjusted
13 to remove the effect of any refund paid under this subsection
14 (e), and further adjusted to include the annual amortization of
15 any difference between the consideration received by an
16 affiliated interest of the electric utility in the sale of an
17 asset which had been sold or transferred by the electric
18 utility to the affiliated interest subsequent to the effective
19 date of this amendatory Act of 1997 and the consideration for
20 which such asset had been sold or transferred to the affiliated
21 interest, with such difference to be amortized ratably from the
22 date of the sale by the affiliated interest to December 31,
23 2006, exceeds the 2-year average of the Index for the same 2
24 years by 1.5 or more percentage points, the electric utility
25 shall make refunds to customers beginning the first billing day
26 of April in the following year in the manner described in

1 paragraph (3) of this subsection. For purposes of this
2 subsection (e), the "Index" shall be the sum of (A) the average
3 for the 12 months ended September 30 of the monthly average
4 yields of 30-year U.S. Treasury bonds published by the Board of
5 Governors of the Federal Reserve System in its weekly H.15
6 Statistical Release or successor publication for each year 1998
7 through 2006, and (B) (i) 4.00 percentage points for each of
8 the 12-month periods ending September 30, 1998 through
9 September 30, 1999 or 8.00 percentage points if the electric
10 utility's average residential retail rate is less than or equal
11 to 90% of the average residential retail rate for the "Midwest
12 Utilities", as that term is defined in subsection (b) of this
13 Section, based on data reported on Form 1 to the Federal Energy
14 Regulatory Commission for calendar year 1995, and the electric
15 utility served between 150,000 and 250,000 retail customers on
16 January 1, 1995, (ii) 7.00 percentage points for each of the
17 12-month periods ending September 30, 2000 through September
18 30, 2006 if the electric utility was providing service to at
19 least 1,000,000 customers in this State on January 1, 1999, or
20 9.00 percentage points if the electric utility's average
21 residential retail rate is less than or equal to 90% of the
22 average residential retail rate for the "Midwest Utilities", as
23 that term is defined in subsection (b) of this Section, based
24 on data reported on Form 1 to the Federal Energy Regulatory
25 Commission for calendar year 1995 and the electric utility
26 served between 150,000 and 250,000 retail customers in this

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

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

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

25 (2) On or before March 31 of each year 2000 through
26 2007 each electric utility shall file a report with the

1 Commission showing its earned rate of return on common
2 equity, calculated in accordance with this subsection, for
3 the preceding calendar year and the average for the
4 preceding 2 calendar years.

5 (3) If an electric utility has excess earnings,
6 determined in accordance with paragraphs (1) and (2) of
7 this subsection, the refunds which the electric utility
8 shall pay to its customers beginning the first billing day
9 of April in the following year shall be calculated and
10 applied as follows:

11 (i) The electric utility's excess earnings shall
12 be multiplied by the average of the beginning and
13 ending balances of the electric utility's common
14 equity for the 2-year period in which excess earnings
15 occurred.

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

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

1 kilowatt-hour refund factor.

2 (iv) The cents per kilowatt-hour refund factor
3 calculated in (iii) shall be credited to the electric
4 utility's customers by applying the factor on the
5 customer's monthly bills to each kilowatt-hour sold or
6 delivered until the total amount calculated in (ii) has
7 been paid to customers.

8 (f) During the mandatory transition period, an electric
9 utility may file revised tariffs reducing the price of any
10 tariffed service offered by the electric utility for all
11 customers taking that tariffed service, which shall be
12 effective 7 days after filing.

13 (g) During the mandatory transition period, an electric
14 utility may, without obtaining any approval of the Commission
15 other than that provided for in this subsection and
16 notwithstanding any other provision of this Act or any rule or
17 regulation of the Commission that would require such approval:

18 (1) implement a reorganization, other than a merger of
19 2 or more public utilities as defined in Section 3-105 or
20 their holding companies;

21 (2) retire generating plants from service;

22 (3) sell, assign, lease or otherwise transfer assets to
23 an affiliated or unaffiliated entity and as part of such
24 transaction enter into service agreements, power purchase
25 agreements, or other agreements with the transferee;
26 provided, however, that the prices, terms and conditions of

1 any power purchase agreement must be approved or allowed
2 into effect by the Federal Energy Regulatory Commission; or

3 (4) use any accelerated cost recovery method including
4 accelerated depreciation, accelerated amortization or
5 other capital recovery methods, or record reductions to the
6 original cost of its assets.

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

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

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

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

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

17 (v) if the electric utility proposes to sell,
18 assign, lease or otherwise transfer a generating plant
19 that brings the amount of net dependable generating
20 capacity transferred pursuant to this subsection to an
21 amount equal to or greater than 15% of the electric
22 utility's net dependable capacity as of the effective
23 date of this amendatory Act of 1997, and enters into a
24 power purchase agreement with the entity to which such
25 generating plant is sold, assigned, leased, or
26 otherwise transferred, the electric utility also

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

22 (vi) In addition, if the electric utility proposes
23 to sell, assign, or lease, (A) either (1) an amount of
24 generating plant that brings the amount of net
25 dependable generating capacity transferred pursuant to
26 this subsection to an amount equal to or greater than

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

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

21 In any proceeding conducted by the Commission
22 pursuant to this subparagraph (vi), intervention shall
23 be limited to parties with a direct interest in the
24 transaction which is the subject of the hearing and any
25 statutory consumer protection agency as defined in
26 subsection (d) of Section 9-102.1. Notwithstanding the

1 provisions of Section 10-113 of this Act, any
2 application seeking rehearing of an order issued under
3 this subparagraph (vi), whether filed by the electric
4 utility or by an intervening party, shall be filed
5 within 10 days after service of the order.

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

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

24 (i) Subsequent to the mandatory transition period, the
25 Commission, in any proceeding to establish rates and charges
26 for tariffed services offered by an electric utility, shall

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

1 each customer class exceed the market value determined pursuant
2 to Section 16-112, and, if the electric power and energy
3 component of such tariffed rate exceeds the market value by
4 more than 10% for any customer class, may establish such
5 electric power and energy component at a rate equal to the
6 market value plus 10%. In any such case, the Commission may
7 also elect to extend the provisions of Section 16-111(e) for
8 any period in which the electric utility is collecting
9 transition charges, using information applicable to such
10 period.

11 (j) During the mandatory transition period, an electric
12 utility may elect to transfer to a non-operating income account
13 under the Commission's Uniform System of Accounts either or
14 both of (i) an amount of unamortized investment tax credit that
15 is in addition to the ratable amount which is credited to the
16 electric utility's operating income account for the year in
17 accordance with Section 46(f)(2) of the federal Internal
18 Revenue Code of 1986, as in effect prior to P.L. 101-508, or
19 (ii) "excess tax reserves", as that term is defined in Section
20 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided
21 that (A) the amount transferred may not exceed the amount of
22 the electric utility's assets that were created pursuant to
23 Statement of Financial Accounting Standards No. 71 which the
24 electric utility has written off during the mandatory
25 transition period, and (B) the transfer shall not be effective
26 until approved by the Internal Revenue Service. An electric

1 utility electing to make such a transfer shall file a statement
2 with the Commission stating the amount and timing of the
3 transfer for which it intends to request approval of the
4 Internal Revenue Service, along with a copy of its proposed
5 request to the Internal Revenue Service for a ruling. The
6 Commission shall issue an order within 14 days after the
7 electric utility's filing approving, subject to receipt of
8 approval from the Internal Revenue Service, the proposed
9 transfer.

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

1 filed, on projects, programs, and improvements within its
2 service area relating to transmission and distribution
3 including, without limitation, infrastructure expansion,
4 repair and replacement, capital investments, operations and
5 maintenance, and vegetation management.

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

8 (220 ILCS 5/16-113)

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

11 (a) An electric utility may, by petition, request the
12 Commission to declare a tariffed service provided by the
13 electric utility to be a competitive service. The electric
14 utility shall give notice of its petition to the public in the
15 same manner that public notice is provided for proposed general
16 increases in rates for tariffed services, in accordance with
17 rules and regulations prescribed by the Commission. The
18 Commission shall hold a hearing and ~~on the petition if a~~
19 ~~hearing is deemed necessary by the Commission. The Commission~~
20 shall declare the class of tariffed service to be a competitive
21 service ~~for some identifiable customer segment or group of~~
22 ~~customers, or some clearly defined geographical area~~ within the
23 electric utility's service area, only after the electric
24 utility demonstrates that at least 33% of the customers in the
25 electric utility's service area that are eligible to take the

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

1 electric power and energy reasonably available to the customer
2 segment or group or in the defined geographical area from one
3 or more providers other than the electric utility or an
4 affiliate of the electric utility, in accordance with this
5 subsection. The Commission shall make its determination and
6 issue its final order declaring or refusing to declare the
7 service to be a competitive service within 180 ~~120~~ days
8 following the date that the petition is filed, ~~or otherwise the~~
9 ~~petition shall be deemed to be granted; provided, that if the~~
10 ~~petition is deemed to be granted by operation of law, the~~
11 ~~Commission shall not thereby be precluded from finding and~~
12 ~~ordering, in a subsequent proceeding initiated by the~~
13 ~~Commission, and after notice and hearing, that the service is~~
14 ~~not competitive based on the criteria set forth in this~~
15 ~~subsection.~~

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

1 that was not taking such service on a tariffed basis on the
2 date the service was declared to be competitive.

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

11 (d) The Commission shall not deny a petition to declare a
12 service to be a competitive service, and shall not find that a
13 service is not a competitive service, on the grounds that it
14 has previously denied the petition of another electric utility
15 to declare the same or a similar service to be a competitive
16 service or has previously determined that the same or a similar
17 service provided by another electric utility is not a
18 competitive service.

19 (e) An electric utility may declare a service, other than
20 delivery services or the provision of electric power or energy,
21 to be competitive by filing with the Commission at least 14
22 days prior to the date on which the service is to become
23 competitive a notice describing the service that is being
24 declared competitive and the date on which it will become
25 competitive; provided, that any customer who is taking a
26 tariffed service that is declared to be a competitive service

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

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

12 Section 99. Effective date. This Act takes effect upon
13 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