



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5071

Introduced 2/7/2012, by Rep. Ann Williams

SYNOPSIS AS INTRODUCED:

220 ILCS 5/3-105
220 ILCS 5/16-102

from Ch. 111 2/3, par. 3-105

Amends the Public Utilities Act. Provides that an entity that owns or operates a facility that furnishes or sells electricity to the public for the purpose of charging electric vehicles is not and shall not be deemed a public utility or an alternative retail electric supplier. Provides that if, however, the entity that owns or operates such a facility is otherwise deemed a public utility or an alternative retail electric supplier under the Act, or is otherwise subject to regulation under the Act, then that entity is not exempt from and remains subject to the otherwise applicable provisions of the Act. Effective immediately.

LRB097 20038 CEL 65359 b

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 3-105 and 16-102 as follows:

6 (220 ILCS 5/3-105) (from Ch. 111 2/3, par. 3-105)

7 Sec. 3-105. Public utility.

8 (a) "Public utility" means and includes, except where
9 otherwise expressly provided in this Section, every
10 corporation, company, limited liability company, association,
11 joint stock company or association, firm, partnership or
12 individual, their lessees, trustees, or receivers appointed by
13 any court whatsoever that owns, controls, operates or manages,
14 within this State, directly or indirectly, for public use, any
15 plant, equipment or property used or to be used for or in
16 connection with, or owns or controls any franchise, license,
17 permit or right to engage in:

18 (1) the production, storage, transmission, sale,
19 delivery or furnishing of heat, cold, power, electricity,
20 water, or light, except when used solely for communications
21 purposes;

22 (2) the disposal of sewerage; or

23 (3) the conveyance of oil or gas by pipe line.

1 (b) "Public utility" does not include, however:

2 (1) public utilities that are owned and operated by any
3 political subdivision, public institution of higher
4 education or municipal corporation of this State, or public
5 utilities that are owned by such political subdivision,
6 public institution of higher education, or municipal
7 corporation and operated by any of its lessees or operating
8 agents;

9 (2) water companies which are purely mutual concerns,
10 having no rates or charges for services, but paying the
11 operating expenses by assessment upon the members of such a
12 company and no other person;

13 (3) electric cooperatives as defined in Section 3-119;

14 (4) the following natural gas cooperatives:

15 (A) residential natural gas cooperatives that are
16 not-for-profit corporations established for the
17 purpose of administering and operating, on a
18 cooperative basis, the furnishing of natural gas to
19 residences for the benefit of their members who are
20 residential consumers of natural gas. For entities
21 qualifying as residential natural gas cooperatives and
22 recognized by the Illinois Commerce Commission as
23 such, the State shall guarantee legally binding
24 contracts entered into by residential natural gas
25 cooperatives for the express purpose of acquiring
26 natural gas supplies for their members. The Illinois

1 Commerce Commission shall establish rules and
2 regulations providing for such guarantees. The total
3 liability of the State in providing all such guarantees
4 shall not at any time exceed \$1,000,000, nor shall the
5 State provide such a guarantee to a residential natural
6 gas cooperative for more than 3 consecutive years; and

7 (B) natural gas cooperatives that are
8 not-for-profit corporations operated for the purpose
9 of administering, on a cooperative basis, the
10 furnishing of natural gas for the benefit of their
11 members and that, prior to 90 days after the effective
12 date of this amendatory Act of the 94th General
13 Assembly, either had acquired or had entered into an
14 asset purchase agreement to acquire all or
15 substantially all of the operating assets of a public
16 utility or natural gas cooperative with the intention
17 of operating those assets as a natural gas cooperative;

18 (5) sewage disposal companies which provide sewage
19 disposal services on a mutual basis without establishing
20 rates or charges for services, but paying the operating
21 expenses by assessment upon the members of the company and
22 no others;

23 (6) (Blank);

24 (7) cogeneration facilities, small power production
25 facilities, and other qualifying facilities, as defined in
26 the Public Utility Regulatory Policies Act and regulations

1 promulgated thereunder, except to the extent State
2 regulatory jurisdiction and action is required or
3 authorized by federal law, regulations, regulatory
4 decisions or the decisions of federal or State courts of
5 competent jurisdiction;

6 (8) the ownership or operation of a facility that sells
7 compressed natural gas at retail to the public for use only
8 as a motor vehicle fuel and the selling of compressed
9 natural gas at retail to the public for use only as a motor
10 vehicle fuel;

11 (9) alternative retail electric suppliers as defined
12 in Article XVI; and

13 (10) the Illinois Power Agency.

14 (c) An entity that owns or operates a facility that
15 furnishes or sells electricity to the public for the purpose of
16 charging electric vehicles is not and shall not be deemed a
17 public utility, and is not subject to regulation as such under
18 this Act. If, however, the entity that owns or operates such a
19 facility is otherwise deemed a public utility under this Act,
20 or is otherwise subject to regulation under this Act, then that
21 entity is not exempt from and remains subject to the otherwise
22 applicable provisions of this Act.

23 For purposes of this subsection, the term "electric
24 vehicles" has the meaning ascribed to that term in Section 10
25 of the Electric Vehicle Act.

26 (Source: P.A. 94-738, eff. 5-4-06; 95-481, eff. 8-28-07.)

1 (220 ILCS 5/16-102)

2 Sec. 16-102. Definitions. For the purposes of this Article
3 the following terms shall be defined as set forth in this
4 Section.

5 "Alternative retail electric supplier" means every person,
6 cooperative, corporation, municipal corporation, company,
7 association, joint stock company or association, firm,
8 partnership, individual, or other entity, their lessees,
9 trustees, or receivers appointed by any court whatsoever, that
10 offers electric power or energy for sale, lease or in exchange
11 for other value received to one or more retail customers, or
12 that engages in the delivery or furnishing of electric power or
13 energy to such retail customers, and shall include, without
14 limitation, resellers, aggregators and power marketers, but
15 shall not include (i) electric utilities (or any agent of the
16 electric utility to the extent the electric utility provides
17 tariffed services to retail customers through that agent), (ii)
18 any electric cooperative or municipal system as defined in
19 Section 17-100 to the extent that the electric cooperative or
20 municipal system is serving retail customers within any area in
21 which it is or would be entitled to provide service under the
22 law in effect immediately prior to the effective date of this
23 amendatory Act of 1997, (iii) a public utility that is owned
24 and operated by any public institution of higher education of
25 this State, or a public utility that is owned by such public

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

1 party contractor, which shall be calculated based on the usage
2 of, and the base rates or the contract rates applicable to, the
3 third-party contractor in accordance with Section 16-102.

4 An entity that owns or operates a facility that furnishes
5 or sells electricity to the public for the purpose of charging
6 electric vehicles is not and shall not be deemed an alternative
7 retail electric supplier, and is not subject to regulation as
8 such under this Act. If, however, the entity that owns or
9 operates such a facility is otherwise deemed an alternative
10 retail electric supplier under this Act, or is otherwise
11 subject to regulation under this Act, then that entity is not
12 exempt from and remains subject to the otherwise applicable
13 provisions of this Act.

14 For purposes of this Section, the term "electric vehicles"
15 has the meaning ascribed to that term in Section 10 of the
16 Electric Vehicle Act.

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

1 charges, but including (vi) any subsequent redesign of such
2 rates for tariffed services that is authorized by the
3 Commission after notice and hearing.

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

10 "Contract service" means (1) services, including the
11 provision of electric power and energy or other services, that
12 are provided by mutual agreement between an electric utility
13 and a retail customer that is located in the electric utility's
14 service area, provided that, delivery services shall not be a
15 contract service until such services are declared competitive
16 pursuant to Section 16-113; and also means (2) the provision of
17 electric power and energy by an electric utility to retail
18 customers outside the electric utility's service area pursuant
19 to Section 16-116. Provided, however, contract service does not
20 include electric utility services provided pursuant to (i)
21 contracts that retail customers are required to execute as a
22 condition of receiving tariffed services, or (ii) special or
23 negotiated rate contracts for electric utility services that
24 were entered into between an electric utility and a retail
25 customer prior to the effective date of this amendatory Act of
26 1997 and filed with the Commission.

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

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

12 "Mandatory transition period" means the period from the
13 effective date of this amendatory Act of 1997 through January
14 1, 2007.

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