

# HB3113



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB3113

by Rep. Christian L Mitchell

### SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-111

Amends the Public Utilities Act. Makes a technical change in a Section concerning rates and restructuring transactions during the mandatory transition period.

LRB098 09820 JLS 39973 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 Section 16-111 as follows:

6 (220 ILCS 5/16-111)

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

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

1 1997, impose any condition requiring any filing for an  
2 increase, decrease, or change in, or other review of, an  
3 electric utility's rates or enforce any such condition of any  
4 such order; provided, however, that this subsection shall not  
5 prohibit the Commission from:

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

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

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

26 (4) ordering or allowing into effect any tariff to

1 recover charges pursuant to Sections 9-201.5, 9-220.1,  
2 9-221, 9-222 (except as provided in Section 9-222.1),  
3 16-108, and 16-114 of this Act, Section 5-5 of the  
4 Electricity Infrastructure Maintenance Fee Law, Section  
5 6-5 of the Renewable Energy, Energy Efficiency, and Coal  
6 Resources Development Law of 1997, and Section 13 of the  
7 Energy Assistance Act.

8 After December 31, 2004, the provisions of this subsection  
9 (a) shall not apply to an electric utility whose average  
10 residential retail rate was less than or equal to 90% of the  
11 average residential retail rate for the "Midwest Utilities", as  
12 that term is defined in subsection (b) of this Section, based  
13 on data reported on Form 1 to the Federal Energy Regulatory  
14 Commission for calendar year 1995, and which served between  
15 150,000 and 250,000 retail customers in this State on January  
16 1, 1995 unless the electric utility or its holding company has  
17 been acquired by or merged with an affiliate of another  
18 electric utility subsequent to January 1, 2002. This exemption  
19 shall be limited to this subsection (a) and shall not extend to  
20 any other provisions of this Act.

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

1 provides electric service to (A) more than 500,000 customers  
2 but less than 1,000,000 customers in this State on January 1,  
3 1999, reducing, effective May 1, 2002, each component of its  
4 base rates to residential retail customers by an additional 5%  
5 from the base rates in effect immediately prior to January 1,  
6 1998, or (B) at least 1,000,000 customers in this State on  
7 January 1, 1999, reducing, effective October 1, 2001, each  
8 component of its base rates to residential retail customers by  
9 an additional 5% from the base rates in effect immediately  
10 prior to January 1, 1998. Provided, however, that (A) if an  
11 electric utility's average residential retail rate is less than  
12 or equal to the average residential retail rate for a group of  
13 Midwest Utilities (consisting of all investor-owned electric  
14 utilities with annual system peaks in excess of 1000 megawatts  
15 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,  
16 Missouri, Ohio, and Wisconsin), based on data reported on Form  
17 1 to the Federal Energy Regulatory Commission for calendar year  
18 1995, then it shall only be required to file tariffs (i)  
19 reducing, effective August 1, 1998, each component of its base  
20 rates to residential retail customers by 5% from the base rates  
21 in effect immediately prior to January 1, 1998, (ii) reducing,  
22 effective October 1, 2000, each component of its base rates to  
23 residential retail customers by the lesser of 5% of the base  
24 rates 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 1999,  
3 and (iii) reducing, effective October 1, 2002, each component  
4 of its base rates to residential retail customers by an  
5 additional amount equal to the lesser of 5% of the base rates  
6 in effect immediately prior to January 1, 1998 or the  
7 percentage by which the electric utility's average residential  
8 retail rate exceeds the average residential retail rate of the  
9 Midwest Utilities, based on data reported on Form 1 to the  
10 Federal Energy Regulatory Commission for calendar year 2001;  
11 and (B) if the average residential retail rate of an electric  
12 utility serving between 150,000 and 250,000 retail customers in  
13 this State on January 1, 1995 is less than or equal to 90% of  
14 the average residential retail rate for the Midwest Utilities,  
15 based on data reported on Form 1 to the Federal Energy  
16 Regulatory Commission for calendar year 1995, then it shall  
17 only be required to file tariffs (i) reducing, effective August  
18 1, 1998, each component of its base rates to residential retail  
19 customers by 2% from the base rates in effect immediately prior  
20 to January 1, 1998; (ii) reducing, effective October 1, 2000,  
21 each component of its base rates to residential retail  
22 customers by 2% from the base rate in effect immediately prior  
23 to January 1, 1998; and (iii) reducing, effective October 1,  
24 2002, each component of its base rates to residential retail  
25 customers by 1% from the base rates in effect immediately prior  
26 to January 1, 1998. Provided, further, that any electric

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

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

1 Illinois General Assembly.".

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

9 (d) (Blank.)

10 (e) (Blank.)

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

16 (g) Until all classes of tariffed services are declared  
17 competitive, an electric utility may, without obtaining any  
18 approval of the Commission other than that provided for in this  
19 subsection and notwithstanding any other provision of this Act  
20 or any rule or regulation of the Commission that would require  
21 such approval:

22 (1) implement a reorganization, other than a merger of  
23 2 or more public utilities as defined in Section 3-105 or  
24 their holding companies;

25 (2) retire generating plants from service;

26 (3) sell, assign, lease or otherwise transfer assets to



1 an affiliated or unaffiliated entity and as part of such  
2 transaction enter into service agreements, power purchase  
3 agreements, or other agreements with the transferee;  
4 provided, however, that the prices, terms and conditions of  
5 any power purchase agreement must be approved or allowed  
6 into effect by the Federal Energy Regulatory Commission; or

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

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

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

1 affiliates, a certification from the chief accounting  
2 officer of the utility that such entries are in accord with  
3 those cost allocation guidelines;

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

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

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

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

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

22 (vi) in addition, if the electric utility proposes to  
23 sell, assign, or lease, (A) either (1) an amount of  
24 generating plant that brings the amount of net dependable  
25 generating capacity transferred pursuant to this  
26 subsection to an amount equal to or greater than 15% of its

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

1 services in a safe and reliable manner, or (2) that there  
2 is a strong likelihood that consummation of the proposed  
3 transaction will result in the electric utility being  
4 entitled to request an increase in its base rates. Any  
5 hearing initiated by the Commission into the proposed  
6 transaction shall be completed, and the Commission's final  
7 order approving or prohibiting the proposed transaction  
8 shall be entered, within 90 days after the date the  
9 electric utility's notice was filed. Provided, however,  
10 that a sale, assignment, or lease of transmission  
11 facilities to an independent system operator that meets the  
12 requirements of Section 16-126 shall not be subject to  
13 Commission approval under this Section.

14 In any proceeding conducted by the Commission pursuant  
15 to this subparagraph (vi), intervention shall be limited to  
16 parties with a direct interest in the transaction which is  
17 the subject of the hearing and any statutory consumer  
18 protection agency as defined in subsection (d) of Section  
19 9-102.1. Notwithstanding the provisions of Section 10-113  
20 of this Act, any application seeking rehearing of an order  
21 issued under this subparagraph (vi), whether filed by the  
22 electric utility or by an intervening party, shall be filed  
23 within 10 days after service of the order.

24 The Commission shall not in any subsequent proceeding or  
25 otherwise, review such a reorganization or other transaction  
26 authorized by this Section, but shall retain the authority to

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

19 (h) During the mandatory transition period, the Commission  
20 shall not establish or use any rates of depreciation, which for  
21 purposes of this subsection shall include amortization, for any  
22 electric utility other than those established pursuant to  
23 subsection (c) of Section 5-104 of this Act or utilized  
24 pursuant to subsection (g) of this Section. Provided, however,  
25 that in any proceeding to review an electric utility's rates  
26 for tariffed services pursuant to Section 9-201, 9-202, 9-250

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

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

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

25 (j) During the mandatory transition period, an electric  
26 utility may elect to transfer to a non-operating income account



1 under the Commission's Uniform System of Accounts either or  
2 both of (i) an amount of unamortized investment tax credit that  
3 is in addition to the ratable amount which is credited to the  
4 electric utility's operating income account for the year in  
5 accordance with Section 46(f)(2) of the federal Internal  
6 Revenue Code of 1986, as in effect prior to P.L. 101-508, or  
7 (ii) "excess tax reserves", as that term is defined in Section  
8 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided  
9 that (A) the amount transferred may not exceed the amount of  
10 the electric utility's assets that were created pursuant to  
11 Statement of Financial Accounting Standards No. 71 which the  
12 electric utility has written off during the mandatory  
13 transition period, and (B) the transfer shall not be effective  
14 until approved by the Internal Revenue Service. An electric  
15 utility electing to make such a transfer shall file a statement  
16 with the Commission stating the amount and timing of the  
17 transfer for which it intends to request approval of the  
18 Internal Revenue Service, along with a copy of its proposed  
19 request to the Internal Revenue Service for a ruling. The  
20 Commission shall issue an order within 14 days after the  
21 electric utility's filing approving, subject to receipt of  
22 approval from the Internal Revenue Service, the proposed  
23 transfer.

24 (k) If an electric utility is selling or transferring to a  
25 single buyer 5 or more generating plants located in this State  
26 with a total net dependable capacity of 5000 megawatts or more

1 pursuant to subsection (g) of this Section and has obtained a  
2 sale price or consideration that exceeds 200% of the book value  
3 of such plants, the electric utility must provide to the  
4 Governor, the President of the Illinois Senate, the Minority  
5 Leader of the Illinois Senate, the Speaker of the Illinois  
6 House of Representatives, and the Minority Leader of the  
7 Illinois House of Representatives no later than 15 days after  
8 filing its notice under subsection (g) of this Section or 5  
9 days after the date on which this subsection (k) becomes law,  
10 whichever is later, a written commitment in which such electric  
11 utility agrees to expend \$2 billion outside the corporate  
12 limits of any municipality with 1,000,000 or more inhabitants  
13 within such electric utility's service area, over a 6-year  
14 period beginning with the calendar year in which the notice is  
15 filed, on projects, programs, and improvements within its  
16 service area relating to transmission and distribution  
17 including, without limitation, infrastructure expansion,  
18 repair and replacement, capital investments, operations and  
19 maintenance, and vegetation management.

20 (1) Notwithstanding any other provision of this Act or any  
21 rule, regulation, or prior order of the Commission, a public  
22 utility providing electric and gas service may do any one or  
23 more of the following: transfer assets to, reorganize with, or  
24 merge with one or more public utilities under common holding  
25 company ownership or control in the manner prescribed in  
26 subsection (g) of this Section. No merger transaction costs,

1 such as fees paid to attorneys, investment bankers, and other  
2 consultants, incurred in connection with a merger pursuant to  
3 this subsection (l) shall be recoverable in any subsequent rate  
4 proceeding. Approval of a merger pursuant to this subsection  
5 (l) shall not constitute approval of, or otherwise require,  
6 rate recovery of other costs incurred in connection with, or to  
7 implement the merger, such as the cost of restructuring,  
8 combining, or integrating debt, assets, or systems. Such other  
9 costs may be recovered only to the extent that the surviving  
10 utility can demonstrate that the cost savings produced by such  
11 restructuring, combination, or integration exceed the  
12 associated costs. Nothing in this subsection (l) shall impair  
13 the terms or conditions of employment or the collective  
14 bargaining rights of any employees of the utilities that are  
15 transferring assets, reorganizing, or merging.

16 (m) If an electric utility that on December 31, 2005  
17 provided electric service to at least 100,000 customers in  
18 Illinois transfers assets, reorganizes, or merges under this  
19 Section, then the same provisions apply that applied during the  
20 mandatory transition period under Section 16-128.

21 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;  
22 95-876, eff. 8-21-08.)