

1 AMENDMENT TO SENATE BILL 2081

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2081, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Public Utilities Act is amended by  
6 changing Sections 9-220, 16-102, and 16-111 and adding  
7 Section 16-111.3 as follows:

8 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

9 Sec. 9-220. Rate changes based on changes in fuel costs.

10 (a) Notwithstanding the provisions of Section 9-201, the  
11 Commission may authorize the increase or decrease of rates  
12 and charges based upon changes in the cost of fuel used in  
13 the generation or production of electric power, changes in  
14 the cost of purchased power, or changes in the cost of  
15 purchased gas through the application of fuel adjustment  
16 clauses or purchased gas adjustment clauses. The Commission  
17 may also authorize the increase or decrease of rates and  
18 charges based upon expenditures or revenues resulting from  
19 the purchase or sale of emission allowances created under the  
20 federal Clean Air Act Amendments of 1990, through such fuel  
21 adjustment clauses, as a cost of fuel. For the purposes of  
22 this paragraph, cost of fuel used in the generation or

1 production of electric power shall include the amount of any  
2 fees paid by the utility for the implementation and operation  
3 of a process for the desulfurization of the flue gas when  
4 burning high sulfur coal at any location within the State of  
5 Illinois irrespective of the attainment status designation of  
6 such location; but shall not include transportation costs of  
7 coal (i) except to the extent that for contracts entered into  
8 on and after the effective date of this amendatory Act of  
9 1997, the cost of the coal, including transportation costs,  
10 constitutes the lowest cost for adequate and reliable fuel  
11 supply reasonably available to the public utility in  
12 comparison to the cost, including transportation costs, of  
13 other adequate and reliable sources of fuel supply reasonably  
14 available to the public utility, or (ii) except as otherwise  
15 provided in the next 3 sentences of this paragraph. Such  
16 costs of fuel shall, when requested by a utility or at the  
17 conclusion of the utility's next general electric rate  
18 proceeding, whichever shall first occur, include  
19 transportation costs of coal purchased under existing coal  
20 purchase contracts. For purposes of this paragraph "existing  
21 coal purchase contracts" means contracts for the purchase of  
22 coal in effect on the effective date of this amendatory Act  
23 of 1991, as such contracts may thereafter be amended, but  
24 only to the extent that any such amendment does not increase  
25 the aggregate quantity of coal to be purchased under such  
26 contract. Nothing herein shall authorize an electric utility  
27 to recover through its fuel adjustment clause any amounts of  
28 transportation costs of coal that were included in the  
29 revenue requirement used to set base rates in its most recent  
30 general rate proceeding. Cost shall be based upon uniformly  
31 applied accounting principles. Annually, the Commission shall  
32 initiate public hearings to determine whether the clauses  
33 reflect actual costs of fuel, gas, power, or coal  
34 transportation purchased to determine whether such purchases

1 were prudent, and to reconcile any amounts collected with the  
2 actual costs of fuel, power, gas, or coal transportation  
3 prudently purchased. In each such proceeding, the burden of  
4 proof shall be upon the utility to establish the prudence of  
5 its cost of fuel, power, gas, or coal transportation  
6 purchases and costs. The Commission shall issue its final  
7 order in each such annual proceeding for an electric utility  
8 by December 31 of the year immediately following the year to  
9 which the proceeding pertains, provided, that the Commission  
10 shall issue its final order with respect to such annual  
11 proceeding for the years 1996 and earlier by December 31,  
12 1998.

13 (b) A public utility providing electric service, other  
14 than a public utility described in subsections (e) or (f) of  
15 this Section, may at any time during the mandatory transition  
16 period file with the Commission proposed tariff sheets that  
17 eliminate the public utility's fuel adjustment clause and  
18 adjust the public utility's base rate tariffs by the amount  
19 necessary for the base fuel component of the base rates to  
20 recover the public utility's average fuel and power supply  
21 costs per kilowatt-hour for the 2 most recent years for which  
22 the Commission has issued final orders in annual proceedings  
23 pursuant to subsection (a), where the average fuel and power  
24 supply costs per kilowatt-hour shall be calculated as the sum  
25 of the public utility's prudent and allowable fuel and power  
26 supply costs as found by the Commission in the 2 proceedings  
27 divided by the public utility's actual jurisdictional  
28 kilowatt-hour sales for those 2 years. Notwithstanding any  
29 contrary or inconsistent provisions in Section 9-201 of this  
30 Act, in subsection (a) of this Section or in any rules or  
31 regulations promulgated by the Commission pursuant to  
32 subsection (g) of this Section, the Commission shall review  
33 and shall by order approve, or approve as modified, the  
34 proposed tariff sheets within 60 days after the date of the

1 public utility's filing. The Commission may modify the  
2 public utility's proposed tariff sheets only to the extent  
3 the Commission finds necessary to achieve conformance to the  
4 requirements of this subsection (b). During the 5 years  
5 following the date of the Commission's order, but in any  
6 event no earlier than January 1, 2007 2005, a public utility  
7 whose fuel adjustment clause has been eliminated pursuant to  
8 this subsection shall not file proposed tariff sheets  
9 seeking, or otherwise petition the Commission for,  
10 reinstatement of a fuel adjustment clause.

11 (c) Notwithstanding any contrary or inconsistent  
12 provisions in Section 9-201 of this Act, in subsection (a) of  
13 this Section or in any rules or regulations promulgated by  
14 the Commission pursuant to subsection (g) of this Section, a  
15 public utility providing electric service, other than a  
16 public utility described in subsection (e) or (f) of this  
17 Section, may at any time during the mandatory transition  
18 period file with the Commission proposed tariff sheets that  
19 establish the rate per kilowatt-hour to be applied pursuant  
20 to the public utility's fuel adjustment clause at the average  
21 value for such rate during the preceding 24 months, provided  
22 that such average rate results in a credit to customers'  
23 bills, without making any revisions to the public utility's  
24 base rate tariffs. The proposed tariff sheets shall  
25 establish the fuel adjustment rate for a specific time period  
26 of at least 3 years but not more than 5 years, provided that  
27 the terms and conditions for any reinstatement earlier than 5  
28 years shall be set forth in the proposed tariff sheets and  
29 subject to modification or approval by the Commission. The  
30 Commission shall review and shall by order approve the  
31 proposed tariff sheets if it finds that the requirements of  
32 this subsection are met. The Commission shall not conduct  
33 the annual hearings specified in the last 3 sentences of  
34 subsection (a) of this Section for the utility for the period

1 that the factor established pursuant to this subsection is in  
2 effect.

3 (d) A public utility providing electric service, or a  
4 public utility providing gas service may file with the  
5 Commission proposed tariff sheets that eliminate the public  
6 utility's fuel or purchased gas adjustment clause and adjust  
7 the public utility's base rate tariffs to provide for  
8 recovery of power supply costs or gas supply costs that would  
9 have been recovered through such clause; provided, that the  
10 provisions of this subsection (d) shall not be available to a  
11 public utility described in subsections (e) or (f) of this  
12 Section to eliminate its fuel adjustment clause.  
13 Notwithstanding any contrary or inconsistent provisions in  
14 Section 9-201 of this Act, in subsection (a) of this Section,  
15 or in any rules or regulations promulgated by the Commission  
16 pursuant to subsection (g) of this Section, the Commission  
17 shall review and shall by order approve, or approve as  
18 modified in the Commission's order, the proposed tariff  
19 sheets within 240 days after the date of the public utility's  
20 filing. The Commission's order shall approve rates and  
21 charges that the Commission, based on information in the  
22 public utility's filing or on the record if a hearing is held  
23 by the Commission, finds will recover the reasonable, prudent  
24 and necessary jurisdictional power supply costs or gas supply  
25 costs incurred or to be incurred by the public utility during  
26 a 12 month period found by the Commission to be appropriate  
27 for these purposes, provided, that such period shall be  
28 either (i) a 12 month historical period occurring during the  
29 15 months ending on the date of the public utility's filing,  
30 or (ii) a 12 month future period ending no later than 15  
31 months following the date of the public utility's filing.  
32 The public utility shall include with its tariff filing  
33 information showing both (1) its actual jurisdictional power  
34 supply costs or gas supply costs for a 12 month historical

1 period conforming to (i) above and (2) its projected  
2 jurisdictional power supply costs or gas supply costs for a  
3 future 12 month period conforming to (ii) above. If the  
4 Commission's order requires modifications in the tariff  
5 sheets filed by the public utility, the public utility shall  
6 have 7 days following the date of the order to notify the  
7 Commission whether the public utility will implement the  
8 modified tariffs or elect to continue its fuel or purchased  
9 gas adjustment clause in force as though no order had been  
10 entered. The Commission's order shall provide for any  
11 reconciliation of power supply costs or gas supply costs, as  
12 the case may be, and associated revenues through the date  
13 that the public utility's fuel or purchased gas adjustment  
14 clause is eliminated. During the 5 years following the date  
15 of the Commission's order, a public utility whose fuel or  
16 purchased gas adjustment clause has been eliminated pursuant  
17 to this subsection shall not file proposed tariff sheets  
18 seeking, or otherwise petition the Commission for,  
19 reinstatement or adoption of a fuel or purchased gas  
20 adjustment clause. Nothing in this subsection (d) shall be  
21 construed as limiting the Commission's authority to eliminate  
22 a public utility's fuel adjustment clause or purchased gas  
23 adjustment clause in accordance with any other applicable  
24 provisions of this Act.

25 (e) Notwithstanding any contrary or inconsistent  
26 provisions in Section 9-201 of this Act, in subsection (a)  
27 of this Section, or in any rules promulgated by the  
28 Commission pursuant to subsection (g) of this Section, a  
29 public utility providing electric service to more than  
30 1,000,000 customers in this State may, within the first 6  
31 months after the effective date of this amendatory Act of  
32 1997, file with the Commission proposed tariff sheets that  
33 eliminate, effective January 1, 1997, the public utility's  
34 fuel adjustment clause without adjusting its base rates, and

1 such tariff sheets shall be effective upon filing. To the  
2 extent the application of the fuel adjustment clause had  
3 resulted in net charges to customers after January 1, 1997,  
4 the utility shall also file a tariff sheet that provides for  
5 a refund stated on a per kilowatt-hour basis of such charges  
6 over a period not to exceed 6 months; provided however, that  
7 such refund shall not include the proportional amounts of  
8 taxes paid under the Use Tax Act, Service Use Tax Act,  
9 Service Occupation Tax Act, and Retailers' Occupation Tax Act  
10 on fuel used in generation. The Commission shall issue an  
11 order within 45 days after the date of the public utility's  
12 filing approving or approving as modified such tariff sheet.  
13 If the fuel adjustment clause is eliminated pursuant to this  
14 subsection, the Commission shall not conduct the annual  
15 hearings specified in the last 3 sentences of subsection (a)  
16 of this Section for the utility for any period after  
17 December 31, 1996 and prior to any reinstatement of such  
18 clause. A public utility whose fuel adjustment clause has  
19 been eliminated pursuant to this subsection shall not file a  
20 proposed tariff sheet seeking, or otherwise petition the  
21 Commission for, reinstatement of the fuel adjustment clause  
22 prior to January 1, 2007 2005.

23 (f) Notwithstanding any contrary or inconsistent  
24 provisions in Section 9-201 of this Act, in subsection (a) of  
25 this Section, or in any rules or regulations promulgated by  
26 the Commission pursuant to subsection (g) of this Section, a  
27 public utility providing electric service to more than  
28 500,000 customers but fewer than 1,000,000 customers in this  
29 State may, within the first 6 months after the effective date  
30 of this amendatory Act of 1997, file with the Commission  
31 proposed tariff sheets that eliminate, effective January 1,  
32 1997, the public utility's fuel adjustment clause and adjust  
33 its base rates by the amount necessary for the base fuel  
34 component of the base rates to recover 91% of the public

1 utility's average fuel and power supply costs for the 2 most  
2 recent years for which the Commission, as of January 1, 1997,  
3 has issued final orders in annual proceedings pursuant to  
4 subsection (a), where the average fuel and power supply costs  
5 per kilowatt-hour shall be calculated as the sum of the  
6 public utility's prudent and allowable fuel and power supply  
7 costs as found by the Commission in the 2 proceedings divided  
8 by the public utility's actual jurisdictional kilowatt-hour  
9 sales for those 2 years, provided, that such tariff sheets  
10 shall be effective upon filing. To the extent the  
11 application of the fuel adjustment clause had resulted in net  
12 charges to customers after January 1, 1997, the utility shall  
13 also file a tariff sheet that provides for a refund stated on  
14 a per kilowatt-hour basis of such charges over a period not  
15 to exceed 6 months. Provided however, that such refund shall  
16 not include the proportional amounts of taxes paid under the  
17 Use Tax Act, Service Use Tax Act, Service Occupation Tax Act,  
18 and Retailers' Occupation Tax Act on fuel used in generation.  
19 The Commission shall issue an order within 45 days after the  
20 date of the public utility's filing approving or approving as  
21 modified such tariff sheet. If the fuel adjustment clause is  
22 eliminated pursuant to this subsection, the Commission shall  
23 not conduct the annual hearings specified in the last 3  
24 sentences of subsection (a) of this Section for the utility  
25 for any period after December 31, 1996 and prior to any  
26 reinstatement of such clause. A public utility whose fuel  
27 adjustment clause has been eliminated pursuant to this  
28 subsection shall not file a proposed tariff sheet seeking, or  
29 otherwise petition the Commission for, reinstatement of the  
30 fuel adjustment clause prior to January 1, 2007 2005.

31 (g) The Commission shall have authority to promulgate  
32 rules and regulations to carry out the provisions of this  
33 Section.

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



1 (220 ILCS 5/16-102)

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

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

1 installation of a customer's own cogeneration or  
2 self-generation facilities, but only to the extent the entity  
3 is engaged in owning, selling or arranging for the  
4 installation of such facility, or operating the facility on  
5 behalf of such customer, provided however that any such third  
6 party owner or operator of a facility built after January 1,  
7 1999, complies with the labor provisions of Section 16-128(a)  
8 as though such third party were an alternative retail  
9 electric supplier, or (vi) an industrial or manufacturing  
10 customer that owns its own distribution facilities, to the  
11 extent that the customer provides service from that  
12 distribution system to a third-party contractor located on  
13 the customer's premises that is integrally and predominantly  
14 engaged in the customer's industrial or manufacturing  
15 process; provided, that if the industrial or manufacturing  
16 customer has elected delivery services, the customer shall  
17 pay transition charges applicable to the electric power and  
18 energy consumed by the third-party contractor unless such  
19 charges are otherwise paid by the third party contractor,  
20 which shall be calculated based on the usage of, and the base  
21 rates or the contract rates applicable to, the third-party  
22 contractor in accordance with Section 16-102.

23 "Base rates" means the rates for those tariffed services  
24 that the electric utility is required to offer pursuant to  
25 subsection (a) of Section 16-103 and that were identified in  
26 a rate order for collection of the electric utility's base  
27 rate revenue requirement, excluding (i) separate automatic  
28 rate adjustment riders then in effect, (ii) special or  
29 negotiated contract rates, (iii) delivery services tariffs  
30 filed pursuant to Section 16-108, (iv) real-time pricing, or  
31 (v) tariffs that were in effect prior to October 1, 1996 and  
32 that based charges for services on an index or average of  
33 other utilities' charges, but including (vi) any subsequent  
34 redesign of such rates for tariffed services that is

1 authorized by the Commission after notice and hearing.

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

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

26 "Delivery services" means those services provided by the  
27 electric utility that are necessary in order for the  
28 transmission and distribution systems to function so that  
29 retail customers located in the electric utility's service  
30 area can receive electric power and energy from suppliers  
31 other than the electric utility, and shall include, without  
32 limitation, standard metering and billing services.

33 "Electric utility" means a public utility, as defined in  
34 Section 3-105 of this Act, that has a franchise, license,

1 permit or right to furnish or sell electricity to retail  
2 customers within a service area.

3 "Mandatory transition period" means the period from the  
4 effective date of this amendatory Act of 1997 through January  
5 1, 2007 2005.

6 "Municipal system" shall have the meaning set forth in  
7 Section 17-100.

8 "Real-time pricing" means charges for delivered electric  
9 power and energy that vary on an hour-to-hour basis for  
10 nonresidential retail customers and that vary on a periodic  
11 basis during the day for residential retail customers.

12 "Retail customer" means a single entity using electric  
13 power or energy at a single premises and that (A) either (i)  
14 is receiving or is eligible to receive tariffed services from  
15 an electric utility, or (ii) that is served by a municipal  
16 system or electric cooperative within any area in which the  
17 municipal system or electric cooperative is or would be  
18 entitled to provide service under the law in effect  
19 immediately prior to the effective date of this amendatory  
20 Act of 1997, or (B) an entity which on the effective date of  
21 this Act was receiving electric service from a public utility  
22 and (i) was engaged in the practice of resale and  
23 redistribution of such electricity within a building prior to  
24 January 2, 1957, or (ii) was providing lighting services to  
25 tenants in a multi-occupancy building, but only to the extent  
26 such resale, redistribution or lighting service is authorized  
27 by the electric utility's tariffs that were on file with the  
28 Commission on the effective date of this Act.

29 "Service area" means (i) the geographic area within which  
30 an electric utility was lawfully entitled to provide electric  
31 power and energy to retail customers as of the effective date  
32 of this amendatory Act of 1997, and includes (ii) the  
33 location of any retail customer to which the electric utility  
34 was lawfully providing electric utility services on such

1 effective date.

2 "Small commercial retail customer" means those  
3 nonresidential retail customers of an electric utility  
4 consuming 15,000 kilowatt-hours or less of electricity  
5 annually in its service area.

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

11 "Transition charge" means a charge expressed in cents per  
12 kilowatt-hour that is calculated for a customer or class of  
13 customers as follows for each year in which an electric  
14 utility is entitled to recover transition charges as provided  
15 in Section 16-108:

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

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

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

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

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

31 (A) for nonresidential retail customers, an  
32 amount equal to the greater of (i) 0.5 cents per  
33 kilowatt-hour during the period October 1, 1999  
34 through December 31, 2004, 0.6 cents per

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

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

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

25 "Unbundled service" means a component or constituent part  
 26 of a tariffed service which the electric utility subsequently  
 27 offers separately to its customers.

28 (Source: P.A. 90-561, eff. 12-16-97; 91-50, eff. 6-30-99.)

29 (220 ILCS 5/16-111)

30 Sec. 16-111. Rates and restructuring transactions during  
 31 mandatory transition period.

32 (a) During the mandatory transition period,  
 33 notwithstanding any provision of Article IX of this Act, and

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

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

25 (2) authorizing an electric utility to eliminate  
26 its fuel adjustment clause and adjust its base rate  
27 tariffs in accordance with subsection (b), (d), or (f) of  
28 Section 9-220 of this Act, to fix its fuel adjustment  
29 factor in accordance with subsection (c) of Section 9-220  
30 of this Act, or to eliminate its fuel adjustment clause  
31 in accordance with subsection (e) of Section 9-220 of  
32 this Act;

33 (3) ordering into effect tariffs for delivery  
34 services and transition charges in accordance with



1 Sections 16-104 and 16-108, for real-time pricing in  
2 accordance with Section 16-107, or the options required  
3 by Section 16-110 and subsection (n) of 16-112, allowing  
4 a billing experiment in accordance with Section 16-106,  
5 or modifying delivery services tariffs in accordance with  
6 Section 16-109; or

7 (4) ordering or allowing into effect any tariff to  
8 recover charges pursuant to Sections 9-201.5, 9-220.1,  
9 9-221, 9-222 (except as provided in Section 9-222.1),  
10 16-108, and 16-114 of this Act, Section 5-5 of the  
11 Electricity Infrastructure Maintenance Fee Law, Section  
12 6-5 of the Renewable Energy, Energy Efficiency, and Coal  
13 Resources Development Law of 1997, and Section 13 of the  
14 Energy Assistance Act of 1989.

15 After December 31, 2004, the provisions of this  
16 subsection (a) shall not apply to an electric utility whose  
17 average residential retail rate was less than or equal to 90%  
18 of the average residential retail rate for the "Midwest  
19 Utilities", as that term is defined in subsection (b) of this  
20 Section, based on data reported on Form 1 to the Federal  
21 Energy Regulatory Commission for calendar year 1995, and  
22 which served between 150,000 and 250,000 retail customers in  
23 this State on January 1, 1995. This exemption shall be  
24 limited to this subsection (a) and shall not extend to any  
25 other provisions of this Act.

26 (b) Notwithstanding the provisions of subsection (a),  
27 each Illinois electric utility serving more than 12,500  
28 customers in Illinois shall file tariffs (i) reducing,  
29 effective August 1, 1998, each component of its base rates to  
30 residential retail customers by 15% from the base rates in  
31 effect immediately prior to January 1, 1998 and (ii) if the  
32 public utility provides electric service to (A) more than  
33 500,000 customers but less than 1,000,000 customers in this  
34 State on January 1, 1999, reducing, effective May 1, 2002,

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

1 on Form 1 to the Federal Energy Regulatory Commission for  
2 calendar year 2001; and (B) if the average residential retail  
3 rate of an electric utility serving between 150,000 and  
4 250,000 retail customers in this State on January 1, 1995 is  
5 less than or equal to 90% of the average residential retail  
6 rate for the Midwest Utilities, based on data reported on  
7 Form 1 to the Federal Energy Regulatory Commission for  
8 calendar year 1995, then it shall only be required to file  
9 tariffs (i) reducing, effective August 1, 1998, each  
10 component of its base rates to residential retail customers  
11 by 2% from the base rates in effect immediately prior to  
12 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  
15 prior to January 1, 1998; and (iii) reducing, effective  
16 October 1, 2002, each component of its base rates to  
17 residential retail customers by 1% from the base rates in  
18 effect immediately prior to January 1, 1998. Provided,  
19 further, that any electric utility for which a decrease in  
20 base rates has been or is placed into effect between October  
21 1, 1996 and the dates specified in the preceding sentences of  
22 this subsection, other than pursuant to the requirements of  
23 this subsection, shall be entitled to reduce the amount of  
24 any reduction or reductions in its base rates required by  
25 this subsection by the amount of such other decrease. The  
26 tariffs required under this subsection shall be filed 45 days  
27 in advance of the effective date. Notwithstanding anything to  
28 the contrary in Section 9-220 of this Act, no restatement of  
29 base rates in conjunction with the elimination of a fuel  
30 adjustment clause under that Section shall result in a lesser  
31 decrease in base rates than customers would otherwise receive  
32 under this subsection had the electric utility's fuel  
33 adjustment clause not been eliminated.

34 (c) Any utility reducing its base rates by 15% on August

1 1, 1998 pursuant to subsection (b) shall include the  
2 following statement on its bills for residential customers  
3 from August 1 through December 31, 1998: "Effective August 1,  
4 1998, your rates have been reduced by 15% by the Electric  
5 Service Customer Choice and Rate Relief Law of 1997 passed by  
6 the Illinois General Assembly.". Any utility reducing its  
7 base rates by 5% on August 1, 1998, pursuant to subsection  
8 (b) shall include the following statement on its bills for  
9 residential customers from August 1 through December 31,  
10 1998: "Effective August 1, 1998, your rates have been  
11 reduced by 5% by the Electric Service Customer Choice and  
12 Rate Relief Law of 1997 passed by the Illinois General  
13 Assembly.".

14 Any utility reducing its base rates by 2% on August 1,  
15 1998 pursuant to subsection (b) shall include the following  
16 statement on its bills for residential customers from August  
17 1 through December 31, 1998: "Effective August 1, 1998, your  
18 rates have been reduced by 2% by the Electric Service  
19 Customer Choice and Rate Relief Law of 1997 passed by the  
20 Illinois General Assembly.".

21 (d) During the mandatory transition period, but not  
22 before January 1, 2000, and notwithstanding the provisions  
23 of subsection (a), an electric utility may request an  
24 increase in its base rates if the electric utility  
25 demonstrates that the 2-year average of its earned rate of  
26 return on common equity, calculated as its net income  
27 applicable to common stock divided by the average of its  
28 beginning and ending balances of common equity using data  
29 reported in the electric utility's Form 1 report to the  
30 Federal Energy Regulatory Commission but adjusted to remove  
31 the effects of accelerated depreciation or amortization or  
32 other transition or mitigation measures implemented by the  
33 electric utility pursuant to subsection (g) of this Section  
34 and the effect of any refund paid pursuant to subsection (e)

1 of this Section, is below the 2-year average for the same 2  
2 years of the monthly average yields of 30-year U.S. Treasury  
3 bonds published by the Board of Governors of the Federal  
4 Reserve System in its weekly H.15 Statistical Release or  
5 successor publication. The Commission shall review the  
6 electric utility's request, and may review the justness and  
7 reasonableness of all rates for tariffed services, in  
8 accordance with the provisions of Article IX of this Act,  
9 provided that the Commission shall consider any special or  
10 negotiated adjustments to the revenue requirement agreed to  
11 between the electric utility and the other parties to the  
12 proceeding. In setting rates under this Section, the  
13 Commission shall exclude the costs and revenues that are  
14 associated with competitive services and any billing or  
15 pricing experiments conducted under Section 16-106.

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

1 such difference to be amortized ratably from the date of the  
2 sale by the affiliated interest to December 31, 2006, exceeds  
3 the 2-year average of the Index for the same 2 years by 1.5  
4 or more percentage points, the electric utility shall make  
5 refunds to customers beginning the first billing day of April  
6 in the following year in the manner described in paragraph  
7 (3) of this subsection. For purposes of this subsection (e),  
8 the "Index" shall be the sum of (A) the average for the 12  
9 months ended September 30 of the monthly average yields of  
10 30-year U.S. Treasury bonds published by the Board of  
11 Governors of the Federal Reserve System in its weekly H.15  
12 Statistical Release or successor publication for each year  
13 1998 through 2006 ~~2004~~, and (B) (i) 4.00 percentage points  
14 for each of the 12-month periods ending September 30, 1998  
15 through September 30, 1999 or 8.00 percentage points if the  
16 electric utility's average residential retail rate is less  
17 than or equal to 90% of the average residential retail rate  
18 for the "Midwest Utilities", as that term is defined in  
19 subsection (b) of this Section, based on data reported on  
20 Form 1 to the Federal Energy Regulatory Commission for  
21 calendar year 1995, and the electric utility served between  
22 150,000 and 250,000 retail customers on January 1, 1995, (ii)  
23 7.00 percentage points for each of the 12-month periods  
24 ending September 30, 2000 through September 30, 2006 ~~2004~~ if  
25 the electric utility was providing service to at least  
26 1,000,000 customers in this State on January 1, 1999, or 9.00  
27 percentage points if the electric utility's average  
28 residential retail rate is less than or equal to 90% of the  
29 average residential retail rate for the "Midwest Utilities",  
30 as that term is defined in subsection (b) of this Section,  
31 based on data reported on Form 1 to the Federal Energy  
32 Regulatory Commission for calendar year 1995 and the electric  
33 utility served between 150,000 and 250,000 retail customers  
34 in this State on January 1, 1995, (iii) 11.00 percentage

1 points for each of the 12-month periods ending September 30,  
2 2000 through September 30, 2006 ~~2004~~, but only if the  
3 electric utility's average residential retail rate is less  
4 than or equal to 90% of the average residential retail rate  
5 for the "Midwest Utilities", as that term is defined in  
6 subsection (b) of this Section, based on data reported on  
7 Form 1 to the Federal Energy Regulatory Commission for  
8 calendar year 1995, the electric utility served between  
9 150,000 and 250,000 retail customers in this State on January  
10 1, 1995, and the electric utility offers delivery services on  
11 or before June 1, 2000 to retail customers whose annual  
12 electric energy use comprises 33% of the kilowatt hour sales  
13 to that group of retail customers that are classified under  
14 Division D, Groups 20 through 39 of the Standard Industrial  
15 Classifications set forth in the Standard Industrial  
16 Classification Manual published by the United States Office  
17 of Management and Budget, excluding the kilowatt hour sales  
18 to those customers that are eligible for delivery services  
19 pursuant to Section 16-104(a)(1)(i), and offers delivery  
20 services to its remaining retail customers classified under  
21 Division D, Groups 20 through 39 on or before October 1,  
22 2000, and, provided further, that the electric utility  
23 commits not to petition pursuant to Section 16-108(f) for  
24 entry of an order by the Commission authorizing the electric  
25 utility to implement transition charges for an additional  
26 period after December 31, 2006, or (iv) 5.00 percentage  
27 points for each of the 12-month periods ending September 30,  
28 2000 through September 30, 2006 ~~2004~~ for all other electric  
29 utilities or 7.00 percentage points for such utilities for  
30 each of the 12-month periods ending September 30, 2000  
31 through September 30, 2006 ~~2004~~ for any such utility that  
32 commits not to petition pursuant to Section 16-108(f) for  
33 entry of an order by the Commission authorizing the electric  
34 utility to implement transition charges for an additional

1 period after December 31, 2006 or 11.00 percentage points for  
2 each of the 12-month periods ending September 30, 2005 and  
3 September 30, 2006 for each electric utility providing  
4 service to between 5,000 and 150,000 electric retail  
5 customers in this State on January 1, 1995 if such utility  
6 commits not to petition pursuant to Section 16-108(f) for  
7 entry of an order by the Commission authorizing the electric  
8 utility to implement transition charges for an additional  
9 period after December 31, 2006.

10 (1) For purposes of this subsection (e), "excess  
11 earnings" means the difference between (A) the 2-year  
12 average of the electric utility's earned rate of return  
13 on common equity, less (B) the 2-year average of the sum  
14 of (i) the Index applicable to each of the 2 years and  
15 (ii) 1.5 percentage points; provided, that "excess  
16 earnings" shall never be less than zero.

17 (2) On or before March 31 of each year 2000 through  
18 2007 2005 each electric utility shall file a report with  
19 the Commission showing its earned rate of return on  
20 common equity, calculated in accordance with this  
21 subsection, for the preceding calendar year and the  
22 average for the preceding 2 calendar years.

23 (3) If an electric utility has excess earnings,  
24 determined in accordance with paragraphs (1) and (2) of  
25 this subsection, the refunds which the electric utility  
26 shall pay to its customers beginning the first billing  
27 day of April in the following year shall be calculated  
28 and applied as follows:

29 (i) The electric utility's excess earnings  
30 shall be multiplied by the average of the beginning  
31 and ending balances of the electric utility's common  
32 equity for the 2-year period in which excess  
33 earnings occurred.

34 (ii) The result of the calculation in (i)



1 shall be multiplied by 0.50 and then divided by a  
2 number equal to 1 minus the electric utility's  
3 composite federal and State income tax rate.

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

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

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

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

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

33 (2) retire generating plants from service;

34 (3) sell, assign, lease or otherwise transfer

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

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

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

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

32 (ii) a description of how the electric utility  
33 will use proceeds of any sale, assignment, lease or  
34 transfer to retire debt or otherwise reduce or

1 recover the costs of services provided by such  
2 electric utility;

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

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

15 (v) if the electric utility proposes to sell,  
16 assign, lease or otherwise transfer a generating  
17 plant that brings the amount of net dependable  
18 generating capacity transferred pursuant to this  
19 subsection to an amount equal to or greater than 15%  
20 of the electric utility's net dependable capacity as  
21 of the effective date of this amendatory Act of  
22 1997, and enters into a power purchase agreement  
23 with the entity to which such generating plant is  
24 sold, assigned, leased, or otherwise transferred,  
25 the electric utility also agrees, if its fuel  
26 adjustment clause has not already been eliminated,  
27 to eliminate its fuel adjustment clause in  
28 accordance with subsection (b) of Section 9-220 for  
29 a period of time equal to the length of any such  
30 power purchase agreement or successor agreement, or  
31 until January 1, 2005, whichever is longer; if the  
32 capacity of the generating plant so transferred and  
33 related power purchase agreement does not result in  
34 the elimination of the fuel adjustment clause under

1           this subsection, and the fuel adjustment clause has  
2           not already been eliminated, the electric utility  
3           shall agree that the costs associated with the  
4           transferred plant that are included in the  
5           calculation of the rate per kilowatt-hour to be  
6           applied pursuant to the electric utility's fuel  
7           adjustment clause during such period shall not  
8           exceed the per kilowatt-hour cost associated with  
9           such generating plant included in the electric  
10          utility's fuel adjustment clause during the full  
11          calendar year preceding the transfer, with such  
12          limit to be adjusted each year thereafter by the  
13          Gross Domestic Product Implicit Price Deflator.

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

1 Act in a safe and reliable manner and (B) the  
2 electric utility's projected earned rate of return  
3 on common equity, calculated in accordance with  
4 subsection (d) of this Section, for each year from  
5 the date of the notice through December 31, 2006  
6 2004 both with and without the proposed transaction.  
7 If the Commission has not issued an order initiating  
8 a hearing on the proposed transaction within 30 days  
9 after the date the electric utility's notice is  
10 filed, the transaction shall be deemed approved.  
11 The Commission may, after notice and hearing,  
12 prohibit the proposed transaction if it makes either  
13 or both of the following findings: (1) that the  
14 proposed transaction will render the electric  
15 utility unable to provide its tariffed services in a  
16 safe and reliable manner, or (2) that there is a  
17 strong likelihood that consummation of the proposed  
18 transaction will result in the electric utility  
19 being entitled to request an increase in its base  
20 rates during the mandatory transition period  
21 pursuant to subsection (d) of this Section. Any  
22 hearing initiated by the Commission into the  
23 proposed transaction shall be completed, and the  
24 Commission's final order approving or prohibiting  
25 the proposed transaction shall be entered, within 90  
26 days after the date the electric utility's notice  
27 was filed. Provided, however, that a sale,  
28 assignment, or lease of transmission facilities to  
29 an independent system operator that meets the  
30 requirements of Section 16-126 shall not be subject  
31 to Commission approval under this Section.

32 In any proceeding conducted by the Commission  
33 pursuant to this subparagraph (vi), intervention  
34 shall be limited to parties with a direct interest

1 in the transaction which is the subject of the  
2 hearing and any statutory consumer protection agency  
3 as defined in subsection (d) of Section 9-102.1.  
4 Notwithstanding the provisions of Section 10-113 of  
5 this Act, any application seeking rehearing of an  
6 order issued under this subparagraph (vi), whether  
7 filed by the electric utility or by an intervening  
8 party, shall be filed within 10 days after service  
9 of the order.

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

31 (h) During the mandatory transition period, the  
32 Commission shall not establish or use any rates of  
33 depreciation, which for purposes of this subsection shall  
34 include amortization, for any electric utility other than

1 those established pursuant to subsection (c) of Section 5-104  
2 of this Act or utilized pursuant to subsection (g) of this  
3 Section. Provided, however, that in any proceeding to review  
4 an electric utility's rates for tariffed services pursuant to  
5 Section 9-201, 9-202, 9-250 or 16-111(d) of this Act, the  
6 Commission may establish new rates of depreciation for the  
7 electric utility in the same manner provided in subsection  
8 (d) of Section 5-104 of this Act. An electric utility  
9 implementing an accelerated cost recovery method including  
10 accelerated depreciation, accelerated amortization or other  
11 capital recovery methods, or recording reductions to the  
12 original cost of its assets, pursuant to subsection (g) of  
13 this Section, shall file a statement with the Commission  
14 describing the accelerated cost recovery method to be  
15 implemented or the reduction in the original cost of its  
16 assets to be recorded. Upon the filing of such statement,  
17 the accelerated cost recovery method or the reduction in the  
18 original cost of assets shall be deemed to be approved by the  
19 Commission as though an order had been entered by the  
20 Commission.

21 (i) Subsequent to the mandatory transition period, the  
22 Commission, in any proceeding to establish rates and charges  
23 for tariffed services offered by an electric utility, shall  
24 consider only (1) the then current or projected revenues,  
25 costs, investments and cost of capital directly or indirectly  
26 associated with the provision of such tariffed services; (2)  
27 collection of transition charges in accordance with Sections  
28 16-102 and 16-108 of this Act; (3) recovery of any employee  
29 transition costs as described in Section 16-128 which the  
30 electric utility is continuing to incur, including recovery  
31 of any unamortized portion of such costs previously incurred  
32 or committed, with such costs to be equitably allocated among  
33 bundled services, delivery services, and contracts with  
34 alternative retail electric suppliers; and (4) recovery of

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

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



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

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

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

6 (Source: P.A. 90-561, eff. 12-16-97; 90-563, eff. 12-16-97;  
7 91-50, eff. 6-30-99.)

8 (220 ILCS 5/16-111.3 new)

9 Sec. 16-111.3. Transition period earnings calculations.

10 At such time as the Board of Governors of the Federal Reserve  
11 System ceases to include the monthly average yields of  
12 30-year U.S. Treasury bonds in its weekly H.15 Statistical  
13 Release or successor publication, the Monthly Treasury  
14 Long-Term Average Rates (25 years and above) published by the  
15 Board of Governors of the Federal Reserve System in its  
16 weekly H.15 Statistical Release or successor publication  
17 shall instead be used to establish a rate for the purpose of  
18 calculating the Index defined in subsection (e) of Section  
19 16-111 of this Act, and at such time, such Monthly Treasury  
20 Long-Term Average Rates (25 years and above) shall also be  
21 used in place of the monthly average yields of 30-year U.S.  
22 Treasury bonds in the rate of return calculation required by  
23 subsection (d) of Section 16-111. An electric utility shall  
24 also remove the effects, if any, of the application of  
25 Statement of Financial Accounting Standards No. 142, which  
26 was issued in June 2001, when making the calculations  
27 required by this Section or by subsections (d) and (e) of  
28 Section 16-111.

29 Section 99. Effective date. This Act takes effect upon  
30 becoming law."