

AN ACT concerning regulation.

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

Section 5. The Public Utilities Act is amended by adding Section 20-130 and by changing Sections 8-406, 8-503, and 16-118 as follows:

(220 ILCS 5/8-406) (from Ch. 111 2/3, par. 8-406)

Sec. 8-406. Certificate of public convenience and necessity.

(a) No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

(b) No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or

facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

(c) After the effective date of this amendatory Act of 1987, no construction shall commence on any new nuclear power

plant to be located within this State, and no certificate of public convenience and necessity or other authorization shall be issued therefor by the Commission, until the Director of the Illinois Environmental Protection Agency finds that the United States Government, through its authorized agency, has identified and approved a demonstrable technology or means for the disposal of high level nuclear waste, or until such construction has been specifically approved by a statute enacted by the General Assembly.

As used in this Section, "high level nuclear waste" means those aqueous wastes resulting from the operation of the first cycle of the solvent extraction system or equivalent and the concentrated wastes of the subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel and shall include spent fuel assemblies prior to fuel reprocessing.

(d) In making its determination, the Commission shall attach primary weight to the cost or cost savings to the customers of the utility. The Commission may consider any or all factors which will or may affect such cost or cost savings.

(e) The Commission may issue a temporary certificate which shall remain in force not to exceed one year in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this Section

temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

A public utility shall not be required to obtain but may apply for and obtain a certificate of public convenience and necessity pursuant to this Section with respect to any matter as to which it has received the authorization or order of the Commission under the Electric Supplier Act, and any such authorization or order granted a public utility by the Commission under that Act shall as between public utilities be deemed to be, and shall have except as provided in that Act the same force and effect as, a certificate of public convenience and necessity issued pursuant to this Section.

No electric cooperative shall be made or shall become a party to or shall be entitled to be heard or to otherwise appear or participate in any proceeding initiated under this Section for authorization of power plant construction and as to matters as to which a remedy is available under The Electric Supplier Act.

(f) Such certificates may be altered or modified by the Commission, upon its own motion or upon application by the person or corporation affected. Unless exercised within a period of 2 years from the grant thereof authority conferred by a certificate of convenience and necessity issued by the Commission shall be null and void.

No certificate of public convenience and necessity shall be construed as granting a monopoly or an exclusive privilege,

immunity or franchise.

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

(220 ILCS 5/8-503) (from Ch. 111 2/3, par. 8-503)

Sec. 8-503. Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order; provided, however, that the Commission shall have no authority to order the construction, addition or extension of any electric generating plant unless the public utility requests a certificate for the construction of the plant pursuant to Section 8-406 and in conjunction with such request also requests the entry of an order under this Section. If any additions, extensions, repairs, improvements or changes, or any new structure or structures, which the

Commission has authorized or ordered to be erected, require joint action by 2 or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been authorized or ordered and that the same shall be made at the joint cost whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the apportionment or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

Nothing in this Act shall prevent the Commission, upon its own motion or upon petition, from ordering, after a hearing, the extension, construction, connection or interconnection of plant, equipment, pipe, line, facilities or other physical property of a public utility in whatever configuration the Commission finds necessary to ensure that natural gas is made available to consumers at no increased cost to the customers of

the utility supplying the gas.

Whenever the Commission finds, after a hearing, that the public convenience or necessity requires it, the Commission may order public utilities subject to its jurisdiction to work jointly (1) for the purpose of purchasing and distributing natural gas or gas substitutes, provided it shall not increase the cost of gas to the customers of the participating utilities, or (2) for any other reasonable purpose.

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

(220 ILCS 5/16-118)

Sec. 16-118. Services provided by electric utilities to alternative retail electric suppliers.

(a) It is in the best interest of Illinois energy consumers to promote fair and open competition in the provision of electric power and energy and to prevent anticompetitive practices in the provision of electric power and energy. Therefore, to the extent an electric utility provides electric power and energy or delivery services to alternative retail electric suppliers and such services are not subject to the jurisdiction of the Federal Energy Regulatory Commission, and are not competitive services, they shall be provided through tariffs that are filed with the Commission, pursuant to Article IX of this Act. Each electric utility shall permit alternative retail electric suppliers to interconnect facilities to those owned by the utility provided they meet established standards

for such interconnection, and may provide standby or other services to alternative retail electric suppliers. The alternative retail electric supplier shall sign a contract setting forth the prices, terms and conditions for interconnection with the electric utility and the prices, terms and conditions for services provided by the electric utility to the alternative retail electric supplier in connection with the delivery by the electric utility of electric power and energy supplied by the alternative retail electric supplier.

(b) An electric utility shall file a tariff pursuant to Article IX of the Act that would allow alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located to issue single bills to the retail customers for both the services provided by such alternative retail electric supplier or other electric utility and the delivery services provided by the electric utility to such customers. The tariff filed pursuant to this subsection shall (i) require partial payments made by retail customers to be credited first to the electric utility's tariffed services, (ii) impose commercially reasonable terms with respect to credit and collection, including requests for deposits, (iii) retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services, in the same manner that it would be permitted to if it had billed for the services itself, and (iv) require the alternative retail

electric supplier or other electric utility that elects the billing option provided by this tariff to include on each bill to retail customers an identification of the electric utility providing the delivery services and a listing of the charges applicable to such services. The tariff filed pursuant to this subsection may also include other just and reasonable terms and conditions. In addition, an electric utility, an alternative retail electric supplier or electric utility other than the electric utility in whose service area the customer is located, and a customer served by such alternative retail electric supplier or other electric utility, may enter into an agreement pursuant to which the alternative retail electric supplier or other electric utility pays the charges specified in Section 16-108, or other customer-related charges, including taxes and fees, in lieu of such charges being recovered by the electric utility directly from the customer.

(c) An electric utility with more than 100,000 customers shall file a tariff pursuant to Article IX of this Act that provides alternative retail electric suppliers, and electric utilities other than the electric utility in whose service area the retail customers are located, with the option to have the electric utility purchase their receivables for power and energy service provided to residential retail customers and non-residential retail customers with a non-coincident peak demand of less than 400 kilowatts. Receivables for power and energy service of alternative retail electric suppliers or

electric utilities other than the electric utility in whose service area the retail customers are located shall be purchased by the electric utility at a just and reasonable discount rate to be reviewed and approved by the Commission after notice and hearing. The discount rate shall be based on the electric utility's historical bad debt and any reasonable start-up costs and administrative costs associated with the electric utility's purchase of receivables. The discounted rate for purchase of receivables shall be included in the tariff filed pursuant to this subsection (c). The discount rate filed pursuant to this subsection (c) shall be subject to periodic Commission review. The electric utility retains the right to impose the same terms on retail customers with respect to credit and collection, including requests for deposits, and retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services or purchased receivables, in the same manner that it would be permitted to if the retail customers purchased power and energy from the electric utility. The tariff filed pursuant to this subsection (c) shall permit the electric utility to recover from retail customers any uncollected receivables that may arise as a result of the purchase of receivables under this subsection (c), may also include other just and reasonable terms and conditions, and shall provide for the prudently incurred costs associated with the provision of this service pursuant to this subsection (c). Nothing in this subsection (c)

permits the double recovery of bad debt expenses from customers.

(d) An electric utility with more than 100,000 customers shall file a tariff pursuant to Article IX of this Act that would provide alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located with the option to have the electric utility produce and provide single bills to the retail customers for both the electric power and energy service provided by the alternative retail electric supplier or other electric utility and the delivery services provided by the electric utility to the customers. The tariffs filed pursuant to this subsection shall require the electric utility to collect and remit customer payments for electric power and energy service provided by alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located. The tariff filed pursuant to this subsection shall require the electric utility to include on each bill to retail customers an identification of the alternative retail electric supplier or other electric utility that elects the billing option. The tariff filed pursuant to this subsection (d) may also include other just and reasonable terms and conditions and shall provide for the recovery of prudently incurred costs associated with the provision of service pursuant to this subsection (d). The costs associated with the provision of service pursuant to

this Section shall be subject to periodic Commission review.

(e) An electric utility with more than 100,000 customers in this State shall file a tariff pursuant to Article IX of this Act that provides alternative retail electric suppliers, and electric utilities other than the electric utility in whose service area the retail customers are located, with the option to have the electric utility purchase 2 billing cycles worth of uncollectible receivables for power and energy service provided to residential retail customers and to non-residential retail customers with a non-coincident peak demand of less than 400 kilowatts upon returning that customer to that electric utility for delivery and energy service after that alternative retail electric supplier, or an electric utility other than the electric utility in whose service area the retail customer is located, has made reasonable collection efforts on that account. Uncollectible receivables for power and energy service of alternative retail electric suppliers, or electric utilities other than the electric utility in whose service area the retail customers are located, shall be purchased by the electric utility at a just and reasonable discount rate to be reviewed and approved by the Commission, after notice and hearing. The discount rate shall be based on the electric utility's historical bad debt for receivables that are outstanding for a similar length of time and any reasonable start-up costs and administrative costs associated with the electric utility's purchase of receivables. The discounted

rate for purchase of uncollectible receivables shall be included in the tariff filed pursuant to this subsection (e). The electric utility retains the right to impose the same terms on these retail customers with respect to credit and collection, including requests for deposits, and retains the right to disconnect these retail customers, if it does not receive payment for its tariffed services or purchased receivables, in the same manner that it would be permitted to if the retail customers had purchased power and energy from the electric utility. The tariff filed pursuant to this subsection (e) shall permit the electric utility to recover from retail customers any uncollectable receivables that may arise as a result of the purchase of uncollectible receivables under this subsection (e), may also include other just and reasonable terms and conditions, and shall provide for the prudently incurred costs associated with the provision of this service pursuant to this subsection (e). Nothing in this subsection (e) permits the double recovery of utility bad debt expenses from customers. The electric utility may file a joint tariff for this subsection (e) and subsection (c) of this Section.

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

(220 ILCS 5/20-130 new)

Sec. 20-130. Retail choice and referral programs.

(a) The Commission shall have the authority to establish retail choice and referral programs to be administered by an

electric utility or the State in which residential and small commercial customers receive incentives, including, but not limited to, discounted rate introductory offers for switching to participating electric suppliers.

(b) Reasonable costs associated with the implementation and operation of customer choice and referral programs may be recovered in an electric utility's distribution rates, except that any costs associated with any introductory discount for switching to a supplier shall be assumed by that supplier. Reasonable costs associated with the implementation and operation of a customer choice program may also be recovered from retail electric suppliers participating in a customer choice and referral program. In no event, however, shall the Commission mandate a cost recovery mechanism without first providing all interested parties notice and an opportunity to be heard in a hearing before the Commission.

(c) The Office of Retail Market Development shall serve as the clearinghouse for the development of retail choice and referral programs and shall work with electric utilities and interested parties on a continuous basis to implement and improve upon the programs. Nothing in this Section, however, shall prevent an electric utility on its own accord from implementing retail choice and referral programs.

(d) Only customers that qualify for utility service shall be eligible for retail choice and referral programs.

(e) The Office of Retail Market Development shall

immediately upon the effective date of this amendatory Act of the 95th General Assembly explore for possible implementation on as expedited a basis as possible the following retail choice and referral programs:

(1) An introductory fixed discount program in which suppliers participating in the program offer customers a fixed percentage discount off of the electric utility's supply rate for a set number of billing periods. Customers would be able to enroll in the program by using an online enrollment form, completing an enrollment card found in their monthly electric utility bill, or by calling a toll-free number. Customers would be free to withdraw from the program at any time and select another alternative retail electric supplier or return to the electric utility.

(2) A new customer program in which electric utilities would offer consumers initiating new electric service a choice of offers from participating electric suppliers to provide the consumer's electric supply service. Customers expressing a preference for a specific electric supplier would be enrolled with that supplier. Customers not expressing a preference for a specific electric supplier would be offered the opportunity to enroll with an electric supplier selected randomly on a rotating basis.

(3) A customer service call center referral program in which customers calling an electric utility's call center would be offered enrollment with an alternative retail

electric supplier and informed that they have the option to receive immediate savings or introductory offers by participating in the referral program. Customers choosing to participate would be transferred to a customer service representative for the program and would either select the electric supplier from which they would like to take service or be placed with a participating electric supplier chosen at random on a rotating basis.

Nothing in this Section shall prevent the Office of Retail Market Development or the Commission from considering retail choice and referral programs in addition to the programs outlined in this Section.

Section 10. The Consumer Fraud and Deceptive Business Practices Act is amended by changing Section 2EE as follows:

(815 ILCS 505/2EE)

Sec. 2EE. Electric service provider selection. An electric service provider shall not submit or execute a change in a subscriber's selection of a provider of electric service unless and until (i) the provider first discloses all material terms and conditions of the offer to the subscriber; (ii) the provider has obtained the subscriber's express agreement to accept the offer after the disclosure of all material terms and conditions of the offer; and (iii) the provider has confirmed the request for a change in accordance with one of the

following procedures ~~except as follows:~~

(a) The new electric service provider has obtained the subscriber's ~~customer's~~ written or electronically signed authorization in a form that meets the following requirements:

(1) An electric service provider shall obtain any necessary written or electronically signed authorization from a subscriber for a change in electric service by using a letter of agency as specified in this Section. Any letter of agency that does not conform with this Section is invalid.

(2) The letter of agency shall be a separate document (an easily separable document containing only the authorization language described in subparagraph (a) (5) of this Section) whose sole purpose is to authorize an electric service provider change. The letter of agency must be signed and dated by the subscriber requesting the electric service provider change.

(3) The letter of agency shall not be combined with inducements of any kind on the same document.

(4) Notwithstanding subparagraphs (a) (1) and (a) (2) of this Section, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in subparagraph (a) (5) ~~paragraph (5)~~ of this Section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The

letter of agency check shall contain in easily readable, bold-face type on the face of the check, a notice that the consumer is authorizing an electric service provider change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

(5) At a minimum, the letter of agency must be printed with a print of sufficient size to be clearly legible, and must contain clear and unambiguous language that confirms:

(i) The subscriber's billing name and address;

(ii) The decision to change the electric service provider from the current provider to the prospective provider;

(iii) The terms, conditions, and nature of the service to be provided to the subscriber must be clearly and conspicuously disclosed, in writing, and an electric service provider must directly establish the rates for the service contracted for by the subscriber; and

(iv) That the subscriber understand that any electric service provider selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's electric service provider.

(6) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current electric service provider.

(7) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language.

(b) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in this subsection (b), the subscriber's oral authorization to change electric suppliers that confirms and includes appropriate verification data. The independent third party (i) must not be owned, managed, controlled, or directed by the supplier or the supplier's marketing agent; (ii) must not have any financial incentive to confirm supplier change requests for the supplier or the supplier's marketing agent; and (iii) must operate in a location physically separate from the supplier or the supplier's marketing agent.

Automated third-party verification systems and 3-way conference calls may be used for verification purposes so long as the other requirements of this subsection (b) are satisfied.

A supplier or supplier's sales representative initiating a 3-way conference call or a call through an automated verification system must drop off the call once the 3-way connection has been established.

All third-party verification methods shall elicit, at a minimum, the following information: (i) the identity of the subscriber; (ii) confirmation that the person on the call is authorized to make the supplier change; (iii) confirmation that the person on the call wants to make the supplier change; (iv)

the names of the suppliers affected by the change; (v) the service address of the supply to be switched; and (vi) the price of the service to be supplied and the material terms and conditions of the service being offered, including whether any early termination fees apply. Third-party verifiers may not market the supplier's services by providing additional information, including information regarding procedures to block or otherwise freeze an account against further changes.

All third-party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. Submitting suppliers shall maintain and preserve audio records of verification of subscriber authorization for a minimum period of 2 years after obtaining the verification. Automated systems must provide consumers with an option to speak with a live person at any time during the call.

(c) When a subscriber initiates the call to the prospective electric supplier, in order to enroll the subscriber as a customer, the prospective electric supplier must, with the consent of the customer, make a date-stamped, time-stamped audio recording that elicits, at a minimum, the following information:

- (1) the identity of the subscriber;
- (2) confirmation that the person on the call is authorized to make the supplier change;
- (3) confirmation that the person on the call wants to

make the supplier change;

(4) the names of the suppliers affected by the change;

(5) the service address of the supply to be switched;

and

(6) the price of the service to be supplied and the material terms and conditions of the service being offered, including whether any early termination fees apply.

Submitting suppliers shall maintain and preserve the audio records containing the information set forth above for a minimum period of 2 years.

(d) Complaints may be filed with the Illinois Commerce Commission under this Section by a subscriber whose electric service has been provided by an electric service supplier in a manner not in compliance with this Section. If, after notice and hearing, the Commission finds that an electric service provider has violated this Section, the Commission may in its discretion do any one or more of the following:

(1) Require the violating electric service provider to refund to the subscriber charges collected in excess of those that would have been charged by the subscriber's authorized electric service provider.

(2) Require the violating electric service provider to pay to the subscriber's authorized electric supplier the amount the authorized electric supplier would have collected for the electric service. The Commission is authorized to reduce this payment by any amount already

paid by the violating electric supplier to the subscriber's authorized provider for electric service.

(3) Require the violating electric subscriber to pay a fine of up to \$1,000 into the Public Utility Fund for each repeated and intentional violation of this Section.

(4) Issue a cease and desist order.

(5) For a pattern of violation of this Section or for intentionally violating a cease and desist order, revoke the violating provider's certificate of service authority.

(e) For purposes of this Section, "electric service provider" shall have the meaning given that phrase in Section 6.5 of the Attorney General Act.

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

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