



Rep. John E. Bradley

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1 AMENDMENT TO HOUSE BILL 1383

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1383 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by changing  
5 Sections 16-102, 16-111, and 16-113 as follows:

6 (220 ILCS 5/16-102)

7 Sec. 16-102. Definitions. For the purposes of this Article  
8 the following terms shall be defined as set forth in this  
9 Section.

10 "Alternative retail electric supplier" means every person,  
11 cooperative, corporation, municipal corporation, company,  
12 association, joint stock company or association, firm,  
13 partnership, individual, or other entity, their lessees,  
14 trustees, or receivers appointed by any court whatsoever, that  
15 offers electric power or energy for sale, lease or in exchange  
16 for other value received to one or more retail customers, or

1 that engages in the delivery or furnishing of electric power or  
2 energy to such retail customers, and shall include, without  
3 limitation, resellers, aggregators and power marketers, but  
4 shall not include (i) electric utilities (or any agent of the  
5 electric utility to the extent the electric utility provides  
6 tariffed services to retail customers through that agent), (ii)  
7 any electric cooperative or municipal system as defined in  
8 Section 17-100 to the extent that the electric cooperative or  
9 municipal system is serving retail customers within any area in  
10 which it is or would be entitled to provide service under the  
11 law in effect immediately prior to the effective date of this  
12 amendatory Act of 1997, (iii) a public utility that is owned  
13 and operated by any public institution of higher education of  
14 this State, or a public utility that is owned by such public  
15 institution of higher education and operated by any of its  
16 lessees or operating agents, within any area in which it is or  
17 would be entitled to provide service under the law in effect  
18 immediately prior to the effective date of this amendatory Act  
19 of 1997, (iv) a retail customer to the extent that customer  
20 obtains its electric power and energy from that customer's own  
21 cogeneration or self-generation facilities, (v) an entity that  
22 owns, operates, sells, or arranges for the installation of a  
23 customer's own cogeneration or self-generation facilities, but  
24 only to the extent the entity is engaged in owning, selling or  
25 arranging for the installation of such facility, or operating  
26 the facility on behalf of such customer, provided however that

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

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

1 for services on an index or average of other utilities'  
2 charges, but including (vi) any subsequent redesign of such  
3 rates for tariffed services that is authorized by the  
4 Commission after notice and hearing.

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

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

1 1997 and filed with the Commission.

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

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

13 "Mandatory transition period" means the period from  
14 December 16, 1997 (the effective date of Public Act 90-561)  
15 ~~this amendatory Act of 1997~~ through January 1, 2007 and from  
16 the effective date of this amendatory Act of the 95th General  
17 Assembly through the date on which the Commission has approved  
18 declarations of competitive service, pursuant to Section  
19 16-113, for all classes of service offered in the service areas  
20 of all electric utilities that, on December 31, 2005, served at  
21 least 100,000 customers in Illinois.

22 "Municipal system" shall have the meaning set forth in  
23 Section 17-100.

24 "Real-time pricing" means tariffed retail charges for  
25 delivered electric power and energy that vary hour-to-hour and  
26 are determined from wholesale market prices using a methodology

1 approved by the Illinois Commerce Commission.

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

19 "Service area" means (i) the geographic area within which  
20 an electric utility was lawfully entitled to provide electric  
21 power and energy to retail customers as of the effective date  
22 of this amendatory Act of 1997, and includes (ii) the location  
23 of any retail customer to which the electric utility was  
24 lawfully providing electric utility services on such effective  
25 date.

26 "Small commercial retail customer" means those

1 nonresidential retail customers of an electric utility  
2 consuming 15,000 kilowatt-hours or less of electricity  
3 annually in its service area.

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

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

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

1 costs from base rates pursuant to Section 16-114) and any  
2 separate automatic rate adjustment riders (other than a  
3 decommissioning rate as defined in Section 16-114) under  
4 which the customers were receiving or, had they been  
5 customers, would have received electric power and energy  
6 from the electric utility during the year immediately  
7 preceding the date on which such customers were first  
8 eligible for delivery service pursuant to Section 16-104,  
9 or (ii) to the extent applicable, any contract rates,  
10 including contracts or rates for consolidated or  
11 aggregated billing, under which such customers were  
12 receiving electric power and energy from the electric  
13 utility during such year;

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

23 (3) less the market value for the electric power and  
24 energy that the electric utility would have used to supply  
25 all of such customers' electric power and energy  
26 requirements, as a tariffed service, based on the usage



1 identified in paragraph (1), with such market value  
2 determined in accordance with Section 16-112 of this Act;

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

9 (A) for nonresidential retail customers, an amount  
10 equal to the greater of (i) 0.5 cents per kilowatt-hour  
11 during the period October 1, 1999 through December 31,  
12 2004, 0.6 cents per kilowatt-hour in calendar year  
13 2005, and 0.9 cents per kilowatt-hour in calendar year  
14 2006, multiplied in each year by the usage identified  
15 in paragraph (1), or (ii) an amount equal to the  
16 following percentages of the amount produced by  
17 applying the applicable base rates (adjusted as  
18 described in subparagraph (1)(B)) or contract rate to  
19 the usage identified in paragraph (1): 8% for the  
20 period October 1, 1999 through December 31, 2002, 10%  
21 in calendar years 2003 and 2004, 11% in calendar year  
22 2005 and 12% in calendar year 2006; and

23 (B) for residential retail customers, an amount  
24 equal to the following percentages of the amount  
25 produced by applying the base rates in effect on  
26 October 1, 1996 (adjusted as described in subparagraph

1 (1) (B)) to the usage identified in paragraph (1): (i)  
2 6% from May 1, 2002 through December 31, 2002, (ii) 7%  
3 in calendar years 2003 and 2004, (iii) 8% in calendar  
4 year 2005, and (iv) 10% in calendar year 2006;

5 (5) divided by the usage of such customers identified  
6 in paragraph (1),  
7 provided that the transition charge shall never be less than  
8 zero.

9 "Unbundled service" means a component or constituent part  
10 of a tariffed service which the electric utility subsequently  
11 offers separately to its customers.

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

13 (220 ILCS 5/16-111)

14 Sec. 16-111. Rates and restructuring transactions during  
15 mandatory transition period.

16 (a) During the mandatory transition period,  
17 notwithstanding any provision of Article IX of this Act, and  
18 except as provided in subsections (b), (d), (e), and (f) of  
19 this Section, the Commission shall order all electric utilities  
20 that, on December 31, 2005, served at least 100,000 customers  
21 in Illinois to file and implement tariffs (A) to reinstate all  
22 rates charged to the electric utilities' customers on December  
23 31, 2006, within 10 days after the effective date of this  
24 amendatory Act of the 95th General Assembly and (B) to refund  
25 to the utilities' residential customers any amounts charged to

1 such residential customers, from January 1, 2007 until 10 days  
2 after the effective date of this amendatory Act of the 95th  
3 General Assembly, that exceed the rates charged to the electric  
4 utilities' residential customers on December 31, 2006. This  
5 refund must be issued within 30 days after the effective date  
6 of this amendatory Act of the 95th General Assembly and shall  
7 include interest on the full amount of the refund, at the same  
8 interest rate the Commission requires utilities to pay on  
9 customer deposits. After electric rates are reinstated in  
10 accordance with this subsection (a), the Commission shall not,  
11 prior to 2008, (i) initiate, authorize or order any change by  
12 way of increase to those components of the reinstated rates  
13 that reflect the cost of electric energy (other than in  
14 connection with a request for rate increase which was filed  
15 after September 1, 1997 but prior to October 15, 1997, by an  
16 electric utility serving less than 12,500 customers in this  
17 State) or (ii), ~~(ii) initiate or, unless requested by the~~  
18 ~~electric utility, authorize or order any change by way of~~  
19 ~~decrease, restructuring or unbundling (except as provided in~~  
20 ~~Section 16-109A), in the rates of any electric utility that~~  
21 ~~were in effect on October 1, 1996, or (iii) in any order~~  
22 approving any application for a merger pursuant to Section  
23 7-204 that was pending as of May 16, 1997, impose any condition  
24 requiring any filing for an increase, decrease, or change in,  
25 or other review of, an electric utility's rates or enforce any  
26 such condition of any such order. Provided; ~~provided,~~ however,

1 that this subsection shall not prohibit the Commission from:

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

7 (2) authorizing an electric utility to eliminate its  
8 fuel adjustment clause and adjust its base rate tariffs in  
9 accordance with subsection (b), (d), or (f) of Section  
10 9-220 of this Act, to fix its fuel adjustment factor in  
11 accordance with subsection (c) of Section 9-220 of this  
12 Act, or to eliminate its fuel adjustment clause in  
13 accordance with subsection (e) of Section 9-220 of this  
14 Act;

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

22 (4) ordering or allowing into effect any tariff to  
23 recover charges pursuant to Sections 9-201.5, 9-220.1,  
24 9-221, 9-222 (except as provided in Section 9-222.1),  
25 16-108, and 16-114 of this Act, Section 5-5 of the  
26 Electricity Infrastructure Maintenance Fee Law, Section

1           6-5 of the Renewable Energy, Energy Efficiency, and Coal  
2           Resources Development Law of 1997, and Section 13 of the  
3           Energy Assistance Act.

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

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

20          (b) Notwithstanding the provisions of subsection (a), each  
21          Illinois electric utility serving more than 12,500 customers in  
22          Illinois shall file tariffs (i) reducing, effective August 1,  
23          1998, each component of its base rates to residential retail  
24          customers by 15% from the base rates in effect immediately  
25          prior to January 1, 1998 and (ii) if the public utility  
26          provides electric service to (A) more than 500,000 customers

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

1 Federal Energy Regulatory Commission for calendar year 1999,  
2 and (iii) reducing, effective October 1, 2002, each component  
3 of its base rates to residential retail customers by an  
4 additional amount equal to the lesser of 5% of the base rates  
5 in effect immediately prior to January 1, 1998 or the  
6 percentage by which the electric utility's average residential  
7 retail rate exceeds the average residential retail rate of the  
8 Midwest Utilities, based on data reported on Form 1 to the  
9 Federal Energy Regulatory Commission for calendar year 2001;  
10 and (B) if the average residential retail rate of an electric  
11 utility serving between 150,000 and 250,000 retail customers in  
12 this State on January 1, 1995 is less than or equal to 90% of  
13 the average residential retail rate for the Midwest Utilities,  
14 based on data reported on Form 1 to the Federal Energy  
15 Regulatory Commission for calendar year 1995, then it shall  
16 only be required to file tariffs (i) reducing, effective August  
17 1, 1998, each component of its base rates to residential retail  
18 customers by 2% from the base rates in effect immediately prior  
19 to January 1, 1998; (ii) reducing, effective October 1, 2000,  
20 each component of its base rates to residential retail  
21 customers by 2% from the base rate in effect immediately prior  
22 to January 1, 1998; and (iii) reducing, effective October 1,  
23 2002, each component of its base rates to residential retail  
24 customers by 1% from the base rates in effect immediately prior  
25 to January 1, 1998. Provided, further, that any electric  
26 utility for which a decrease in base rates has been or is

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

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



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

8 (d) During the mandatory transition period, but not before  
9 January 1, 2008 ~~2000~~, ~~and notwithstanding the provisions of~~  
10 ~~subsection (a)~~, an electric utility may request an increase in  
11 its base rates if the electric utility demonstrates that the  
12 2-year average of its earned rate of return on common equity,  
13 calculated as its net income applicable to common stock divided  
14 by the average of its beginning and ending balances of common  
15 equity using data reported in the electric utility's Form 1  
16 report to the Federal Energy Regulatory Commission but adjusted  
17 to remove the effects of accelerated depreciation or  
18 amortization or other transition or mitigation measures  
19 implemented by the electric utility pursuant to subsection (g)  
20 of this Section and the effect of any refund paid pursuant to  
21 subsection (e) of this Section, is below the 2-year average for  
22 the same 2 years of the monthly average yields of 30-year U.S.  
23 Treasury bonds published by the Board of Governors of the  
24 Federal Reserve System in its weekly H.15 Statistical Release  
25 or successor publication. The Commission shall review the  
26 electric utility's request, and may review the justness and

1     reasonableness of all rates for tariffed services, in  
2     accordance with the provisions of Article IX of this Act,  
3     provided that the Commission shall consider any special or  
4     negotiated adjustments to the revenue requirement agreed to  
5     between the electric utility and the other parties to the  
6     proceeding. In setting rates under this Section, the Commission  
7     shall exclude the costs and revenues that are associated with  
8     competitive services and any billing or pricing experiments  
9     conducted under Section 16-106.

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

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

1 9.00 percentage points if the electric utility's average  
2 residential retail rate is less than or equal to 90% of the  
3 average residential retail rate for the "Midwest Utilities", as  
4 that term is defined in subsection (b) of this Section, based  
5 on data reported on Form 1 to the Federal Energy Regulatory  
6 Commission for calendar year 1995 and the electric utility  
7 served between 150,000 and 250,000 retail customers in this  
8 State on January 1, 1995, (iii) 11.00 percentage points for  
9 each of the 12-month periods ending September 30, 2000 through  
10 September 30, 2006, but only if the electric utility's average  
11 residential retail rate is less than or equal to 90% of the  
12 average residential retail rate for the "Midwest Utilities", as  
13 that term is defined in subsection (b) of this Section, based  
14 on data reported on Form 1 to the Federal Energy Regulatory  
15 Commission for calendar year 1995, the electric utility served  
16 between 150,000 and 250,000 retail customers in this State on  
17 January 1, 1995, and the electric utility offers delivery  
18 services on or before June 1, 2000 to retail customers whose  
19 annual electric energy use comprises 33% of the kilowatt hour  
20 sales to that group of retail customers that are classified  
21 under Division D, Groups 20 through 39 of the Standard  
22 Industrial Classifications set forth in the Standard  
23 Industrial Classification Manual published by the United  
24 States Office of Management and Budget, excluding the kilowatt  
25 hour sales to those customers that are eligible for delivery  
26 services pursuant to Section 16-104(a)(1)(i), and offers

1 delivery services to its remaining retail customers classified  
2 under Division D, Groups 20 through 39 on or before October 1,  
3 2000, and, provided further, that the electric utility commits  
4 not to petition pursuant to Section 16-108(f) for entry of an  
5 order by the Commission authorizing the electric utility to  
6 implement transition charges for an additional period after  
7 December 31, 2006, or (iv) 5.00 percentage points for each of  
8 the 12-month periods ending September 30, 2000 through  
9 September 30, 2006 for all other electric utilities or 7.00  
10 percentage points for such utilities for each of the 12-month  
11 periods ending September 30, 2000 through September 30, 2006  
12 for any such utility that commits not to petition pursuant to  
13 Section 16-108(f) for entry of an order by the Commission  
14 authorizing the electric utility to implement transition  
15 charges for an additional period after December 31, 2006 or  
16 11.00 percentage points for each of the 12-month periods ending  
17 September 30, 2005 and September 30, 2006 for each electric  
18 utility providing service to fewer than 6,500, or between  
19 75,000 and 150,000, electric retail customers in this State on  
20 January 1, 1995 if such utility commits not to petition  
21 pursuant to Section 16-108(f) for entry of an order by the  
22 Commission authorizing the electric utility to implement  
23 transition charges for an additional period after December 31,  
24 2006.

25 (1) For purposes of this subsection (e), "excess  
26 earnings" means the difference between (A) the 2-year

1 average of the electric utility's earned rate of return on  
2 common equity, less (B) the 2-year average of the sum of  
3 (i) the Index applicable to each of the 2 years and (ii)  
4 1.5 percentage points; provided, that "excess earnings"  
5 shall never be less than zero.

6 (2) On or before March 31 of each year 2000 through  
7 2007 each electric utility shall file a report with the  
8 Commission showing its earned rate of return on common  
9 equity, calculated in accordance with this subsection, for  
10 the preceding calendar year and the average for the  
11 preceding 2 calendar years.

12 (3) If an electric utility has excess earnings,  
13 determined in accordance with paragraphs (1) and (2) of  
14 this subsection, the refunds which the electric utility  
15 shall pay to its customers beginning the first billing day  
16 of April in the following year shall be calculated and  
17 applied as follows:

18 (i) The electric utility's excess earnings shall  
19 be multiplied by the average of the beginning and  
20 ending balances of the electric utility's common  
21 equity for the 2-year period in which excess earnings  
22 occurred.

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

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

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

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

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

25           (1) implement a reorganization, other than a merger of  
26           2 or more public utilities as defined in Section 3-105 or

1 their holding companies;

2 (2) retire generating plants from service;

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

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

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

22 (i) a complete statement of the entries that the  
23 electric utility will make on its books and records of  
24 account to implement the proposed reorganization or  
25 transaction together with a certification from an  
26 independent certified public accountant that such



1 entries are in accord with generally accepted  
2 accounting principles and, if the Commission has  
3 previously approved guidelines for cost allocations  
4 between the utility and its affiliates, a  
5 certification from the chief accounting officer of the  
6 utility that such entries are in accord with those cost  
7 allocation guidelines;

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

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

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

24 (v) if the electric utility proposes to sell,  
25 assign, lease or otherwise transfer a generating plant  
26 that brings the amount of net dependable generating

1 capacity transferred pursuant to this subsection to an  
2 amount equal to or greater than 15% of the electric  
3 utility's net dependable capacity as of the effective  
4 date of this amendatory Act of 1997, and enters into a  
5 power purchase agreement with the entity to which such  
6 generating plant is sold, assigned, leased, or  
7 otherwise transferred, the electric utility also  
8 agrees, if its fuel adjustment clause has not already  
9 been eliminated, to eliminate its fuel adjustment  
10 clause in accordance with subsection (b) of Section  
11 9-220 for a period of time equal to the length of any  
12 such power purchase agreement or successor agreement,  
13 or until January 1, 2005, whichever is longer; if the  
14 capacity of the generating plant so transferred and  
15 related power purchase agreement does not result in the  
16 elimination of the fuel adjustment clause under this  
17 subsection, and the fuel adjustment clause has not  
18 already been eliminated, the electric utility shall  
19 agree that the costs associated with the transferred  
20 plant that are included in the calculation of the rate  
21 per kilowatt-hour to be applied pursuant to the  
22 electric utility's fuel adjustment clause during such  
23 period shall not exceed the per kilowatt-hour cost  
24 associated with such generating plant included in the  
25 electric utility's fuel adjustment clause during the  
26 full calendar year preceding the transfer, with such

1           limit to be adjusted each year thereafter by the Gross  
2 Domestic Product Implicit Price Deflator.

3           (vi) In addition, if the electric utility proposes  
4 to sell, assign, or lease, (A) either (1) an amount of  
5 generating plant that brings the amount of net  
6 dependable generating capacity transferred pursuant to  
7 this subsection to an amount equal to or greater than  
8 15% of its net dependable capacity on the effective  
9 date of this amendatory Act of 1997, or (2) one or more  
10 generating plants with a total net dependable capacity  
11 of 1100 megawatts, or (B) transmission and  
12 distribution facilities that either (1) bring the  
13 amount of transmission and distribution facilities  
14 transferred pursuant to this subsection to an amount  
15 equal to or greater than 15% of the electric utility's  
16 total depreciated original cost investment in such  
17 facilities, or (2) represent an investment of  
18 \$25,000,000 in terms of total depreciated original  
19 cost, the electric utility shall provide, in addition  
20 to the information listed in subparagraphs (i) through  
21 (v), the following information: (A) a description of  
22 how the electric utility will meet its service  
23 obligations under this Act in a safe and reliable  
24 manner and (B) the electric utility's projected earned  
25 rate of return on common equity, calculated in  
26 accordance with subsection (d) of this Section, for

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

1 Section.

2 In any proceeding conducted by the Commission  
3 pursuant to this subparagraph (vi), intervention shall  
4 be limited to parties with a direct interest in the  
5 transaction which is the subject of the hearing and any  
6 statutory consumer protection agency as defined in  
7 subsection (d) of Section 9-102.1. Notwithstanding the  
8 provisions of Section 10-113 of this Act, any  
9 application seeking rehearing of an order issued under  
10 this subparagraph (vi), whether filed by the electric  
11 utility or by an intervening party, shall be filed  
12 within 10 days after service of the order.

13 The Commission shall not in any subsequent proceeding or  
14 otherwise, review such a reorganization or other transaction  
15 authorized by this Section, but shall retain the authority to  
16 allocate costs as stated in Section 16-111(i). An entity to  
17 which an electric utility sells, assigns, leases or transfers  
18 assets pursuant to this subsection (g) shall not, as a result  
19 of the transactions specified in this subsection (g), be deemed  
20 a public utility as defined in Section 3-105. Nothing in this  
21 subsection (g) shall change any requirement under the  
22 jurisdiction of the Illinois Department of Nuclear Safety  
23 including, but not limited to, the payment of fees. Nothing in  
24 this subsection (g) shall exempt a utility from obtaining a  
25 certificate pursuant to Section 8-406 of this Act for the  
26 construction of a new electric generating facility. Nothing in

1 this subsection (g) is intended to exempt the transactions  
2 hereunder from the operation of the federal or State antitrust  
3 laws. Nothing in this subsection (g) shall require an electric  
4 utility to use the procedures specified in this subsection for  
5 any of the transactions specified herein. Any other procedure  
6 available under this Act may, at the electric utility's  
7 election, be used for any such transaction.

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

1 accelerated cost recovery method or the reduction in the  
2 original cost of assets shall be deemed to be approved by the  
3 Commission as though an order had been entered by the  
4 Commission.

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

1     tariffed services. In determining the justness and  
2     reasonableness of the electric power and energy component of an  
3     electric utility's rates for tariffed services subsequent to  
4     the mandatory transition period and prior to the time that the  
5     provision of such electric power and energy is declared  
6     competitive, the Commission shall consider the extent to which  
7     the electric utility's tariffed rates for such component for  
8     each customer class exceed the market value determined pursuant  
9     to Section 16-112, and, if the electric power and energy  
10    component of such tariffed rate exceeds the market value by  
11    more than 10% for any customer class, may establish such  
12    electric power and energy component at a rate equal to the  
13    market value plus 10%. In any such case, the Commission may  
14    also elect to extend the provisions of Section 16-111(e) for  
15    any period in which the electric utility is collecting  
16    transition charges, using information applicable to such  
17    period.

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



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

17 (k) If an electric utility is selling or transferring to a  
18 single buyer 5 or more generating plants located in this State  
19 with a total net dependable capacity of 5000 megawatts or more  
20 pursuant to subsection (g) of this Section and has obtained a  
21 sale price or consideration that exceeds 200% of the book value  
22 of such plants, the electric utility must provide to the  
23 Governor, the President of the Illinois Senate, the Minority  
24 Leader of the Illinois Senate, the Speaker of the Illinois  
25 House of Representatives, and the Minority Leader of the  
26 Illinois House of Representatives no later than 15 days after

1 filing its notice under subsection (g) of this Section or 5  
2 days after the date on which this subsection (k) becomes law,  
3 whichever is later, a written commitment in which such electric  
4 utility agrees to expend \$2 billion outside the corporate  
5 limits of any municipality with 1,000,000 or more inhabitants  
6 within such electric utility's service area, over a 6-year  
7 period beginning with the calendar year in which the notice is  
8 filed, on projects, programs, and improvements within its  
9 service area relating to transmission and distribution  
10 including, without limitation, infrastructure expansion,  
11 repair and replacement, capital investments, operations and  
12 maintenance, and vegetation management.

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

15 (220 ILCS 5/16-113)

16 Sec. 16-113. Declaration of service as a competitive  
17 service.

18 (a) An electric utility may, by petition, request the  
19 Commission to declare a tariffed service provided by the  
20 electric utility to be a competitive service. The electric  
21 utility shall give notice of its petition to the public in the  
22 same manner that public notice is provided for proposed general  
23 increases in rates for tariffed services, in accordance with  
24 rules and regulations prescribed by the Commission. The  
25 Commission shall hold a hearing and ~~on the petition if a~~

1 ~~hearing is deemed necessary by the Commission. The Commission~~  
2 shall declare the class of tariffed service to be a competitive  
3 service ~~for some identifiable customer segment or group of~~  
4 ~~customers, or some clearly defined geographical area~~ within the  
5 electric utility's service area, only after the electric  
6 utility demonstrates that at least 33% of the customers in the  
7 electric utility's service area that are eligible to take the  
8 class of tariffed service instead take service from alternative  
9 retail electric suppliers, as defined in Section 16-102, and  
10 that at least 3 alternative retail electric suppliers provide  
11 service that is comparable to the class of tariffed service to  
12 those customers in the utility's service area that do not take  
13 service from the electric utility; if the service or a  
14 reasonably equivalent substitute service is reasonably  
15 available to the customer segment or group or in the defined  
16 geographical area at a comparable price from one or more  
17 providers other than the electric utility or an affiliate of  
18 the electric utility, and the electric utility has lost or  
19 there is a reasonable likelihood that the electric utility will  
20 lose business for the service to the other provider or  
21 providers; provided, that the Commission may not declare the  
22 provision of electric power and energy to be competitive  
23 pursuant to this subsection with respect to (i) any retail  
24 customer or group of retail customers that is not eligible  
25 pursuant to Section 16-104 to take delivery services provided  
26 by the electric utility and (ii) any residential and small

1 commercial retail customers prior to the last date on which  
2 such customers are required to pay transition charges. In  
3 determining whether to grant or deny a petition to declare the  
4 provision of electric power and energy competitive, the  
5 Commission shall consider, in applying the above criteria,  
6 whether there is adequate transmission capacity into the  
7 service area of the petitioning electric utility to make  
8 electric power and energy reasonably available to the customer  
9 segment or group or in the defined geographical area from one  
10 or more providers other than the electric utility or an  
11 affiliate of the electric utility, in accordance with this  
12 subsection. The Commission shall make its determination and  
13 issue its final order declaring or refusing to declare the  
14 service to be a competitive service within 180 ~~120~~ days  
15 following the date that the petition is filed, ~~or otherwise the~~  
16 ~~petition shall be deemed to be granted; provided, that if the~~  
17 ~~petition is deemed to be granted by operation of law, the~~  
18 ~~Commission shall not thereby be precluded from finding and~~  
19 ~~ordering, in a subsequent proceeding initiated by the~~  
20 ~~Commission, and after notice and hearing, that the service is~~  
21 ~~not competitive based on the criteria set forth in this~~  
22 ~~subsection.~~

23 (b) Any customer except a customer identified in subsection  
24 (c) of Section 16-103 who is taking a tariffed service that is  
25 declared to be a competitive service pursuant to subsection (a)  
26 of this Section shall be entitled to continue to take the

1 service from the electric utility on a tariffed basis for a  
2 period of 3 years following the date that the service is  
3 declared competitive, or such other period as is stated in the  
4 electric utility's tariff pursuant to Section 16-110. This  
5 subsection shall not require the electric utility to offer or  
6 provide on a tariffed basis any service to any customer (except  
7 those customers identified in subsection (c) of Section 16-103)  
8 that was not taking such service on a tariffed basis on the  
9 date the service was declared to be competitive.

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

18 (d) The Commission shall not deny a petition to declare a  
19 service to be a competitive service, and shall not find that a  
20 service is not a competitive service, on the grounds that it  
21 has previously denied the petition of another electric utility  
22 to declare the same or a similar service to be a competitive  
23 service or has previously determined that the same or a similar  
24 service provided by another electric utility is not a  
25 competitive service.

26 (e) An electric utility may declare a service, other than

1 delivery services or the provision of electric power or energy,  
2 to be competitive by filing with the Commission at least 14  
3 days prior to the date on which the service is to become  
4 competitive a notice describing the service that is being  
5 declared competitive and the date on which it will become  
6 competitive; provided, that any customer who is taking a  
7 tariffed service that is declared to be a competitive service  
8 pursuant to this subsection (e) shall be entitled to continue  
9 to take the service from the electric utility on a tariffed  
10 basis until the electric utility files, and the Commission  
11 grants, a petition to declare the service competitive in  
12 accordance with subsection (a) of this Section. The Commission  
13 shall be authorized to find and order, after notice and hearing  
14 in a subsequent proceeding initiated by the Commission, that  
15 any service declared to be competitive pursuant to this  
16 subsection (e) is not competitive in accordance with the  
17 criteria set forth in subsection (a) of this Section.

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

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