



Rep. Rich Brauer

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LRB095 06420 MJR 33770 a

1 AMENDMENT TO HOUSE BILL 2970

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2970 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 3 years after the effective date of this  
18 amendatory Act of the 95th General Assembly, for residential  
19 customers with all electric residential service offered in the  
20 service areas of all electric utilities that, on December 31,  
21 2005, served at least 100,000 customers.

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 to file and implement tariffs to reinstate all rates for  
22 residential customers with all electric residences paid by the  
23 electric utilities' residential customers with all electric  
24 residences on December 31, 2006, within 10 days after the  
25 effective date of this amendatory Act of the 95th General

1 Assembly, and the Commission shall not, prior to 3 years after  
2 the effective date of this amendatory Act of the 95th General  
3 Assembly, (i) initiate, authorize or order any change by way of  
4 increase (other than in connection with a request for rate  
5 increase which was filed after September 1, 1997 but prior to  
6 October 15, 1997, by an electric utility serving less than  
7 12,500 customers in this State) or (ii), ~~(ii) initiate or,~~  
8 ~~unless requested by the electric utility, authorize or order~~  
9 ~~any change by way of decrease, restructuring or unbundling~~  
10 ~~(except as provided in Section 16-109A), in the rates of any~~  
11 ~~electric utility that were in effect on October 1, 1996, or~~  
12 ~~(iii)~~ in any order approving any application for a merger  
13 pursuant to Section 7-204 that was pending as of May 16, 1997,  
14 impose any condition requiring any filing for an increase,  
15 decrease, or change in, or other review of, an electric  
16 utility's rates or enforce any such condition of any such  
17 order; provided, however, that this subsection shall not  
18 prohibit the Commission from:

19 (1) (blank); ~~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 rates~~  
23 ~~based on utility performance, pursuant to Section 9-244;~~

24 (2) authorizing an electric utility to eliminate its  
25 fuel adjustment clause and adjust its base rate tariffs in  
26 accordance with subsection (b), (d), or (f) of Section

1 9-220 of this Act, to fix its fuel adjustment factor in  
2 accordance with subsection (c) of Section 9-220 of this  
3 Act, or to eliminate its fuel adjustment clause in  
4 accordance with subsection (e) of Section 9-220 of this  
5 Act;

6 (3) ordering into effect tariffs for delivery services  
7 and transition charges in accordance with Sections 16-104  
8 and 16-108, for real-time pricing in accordance with  
9 Section 16-107, or the options required by Section 16-110  
10 and subsection (n) of 16-112, allowing a billing experiment  
11 in accordance with Section 16-106, or modifying delivery  
12 services tariffs in accordance with Section 16-109; or

13 (4) ordering or allowing into effect any tariff to  
14 recover charges pursuant to Sections 9-201.5, 9-220.1,  
15 9-221, 9-222 (except as provided in Section 9-222.1),  
16 16-108, and 16-114 of this Act, Section 5-5 of the  
17 Electricity Infrastructure Maintenance Fee Law, Section  
18 6-5 of the Renewable Energy, Energy Efficiency, and Coal  
19 Resources Development Law of 1997, and Section 13 of the  
20 Energy Assistance Act.

21 After December 31, 2004, the provisions of this subsection  
22 (a) shall not apply to an electric utility whose average  
23 residential retail rate was less than or equal to 90% of the  
24 average residential retail rate for the "Midwest Utilities", as  
25 that term is defined in subsection (b) of this Section, based  
26 on data reported on Form 1 to the Federal Energy Regulatory

1 Commission for calendar year 1995, and which served between  
2 150,000 and 250,000 retail customers in this State on January  
3 1, 1995 unless the electric utility or its holding company has  
4 been acquired by or merged with an affiliate of another  
5 electric utility subsequent to January 1, 2002. This exemption  
6 shall be limited to this subsection (a) and shall not extend to  
7 any other provisions of this Act.

8 (b) Notwithstanding the provisions of subsection (a), each  
9 Illinois electric utility serving more than 12,500 customers in  
10 Illinois shall file tariffs (i) reducing, effective August 1,  
11 1998, each component of its base rates to residential retail  
12 customers by 15% from the base rates in effect immediately  
13 prior to January 1, 1998 and (ii) if the public utility  
14 provides electric service to (A) more than 500,000 customers  
15 but less than 1,000,000 customers in this State on January 1,  
16 1999, reducing, effective May 1, 2002, each component of its  
17 base rates to residential retail customers by an additional 5%  
18 from the base rates in effect immediately prior to January 1,  
19 1998, or (B) at least 1,000,000 customers in this State on  
20 January 1, 1999, reducing, effective October 1, 2001, each  
21 component of its base rates to residential retail customers by  
22 an additional 5% from the base rates in effect immediately  
23 prior to January 1, 1998. Provided, however, that (A) if an  
24 electric utility's average residential retail rate is less than  
25 or equal to the average residential retail rate for a group of  
26 Midwest Utilities (consisting of all investor-owned electric

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

1 the average residential retail rate for the Midwest Utilities,  
2 based on data reported on Form 1 to the Federal Energy  
3 Regulatory Commission for calendar year 1995, then it shall  
4 only be required to file tariffs (i) reducing, effective August  
5 1, 1998, each component of its base rates to residential retail  
6 customers by 2% from the base rates in effect immediately prior  
7 to January 1, 1998; (ii) reducing, effective October 1, 2000,  
8 each component of its base rates to residential retail  
9 customers by 2% from the base rate in effect immediately prior  
10 to January 1, 1998; and (iii) reducing, effective October 1,  
11 2002, each component of its base rates to residential retail  
12 customers by 1% from the base rates in effect immediately prior  
13 to January 1, 1998. Provided, further, that any electric  
14 utility for which a decrease in base rates has been or is  
15 placed into effect between October 1, 1996 and the dates  
16 specified in the preceding sentences of this subsection, other  
17 than pursuant to the requirements of this subsection, shall be  
18 entitled to reduce the amount of any reduction or reductions in  
19 its base rates required by this subsection by the amount of  
20 such other decrease. The tariffs required under this subsection  
21 shall be filed 45 days in advance of the effective date.  
22 Notwithstanding anything to the contrary in Section 9-220 of  
23 this Act, no restatement of base rates in conjunction with the  
24 elimination of a fuel adjustment clause under that Section  
25 shall result in a lesser decrease in base rates than customers  
26 would otherwise receive under this subsection had the electric

1 utility's fuel adjustment clause not been eliminated.

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

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

22 (d) During the mandatory transition period, but not before  
23 January 1, 2000, and notwithstanding the provisions of  
24 subsection (a), an electric utility may request an increase in  
25 its base rates if the electric utility demonstrates that the  
26 2-year average of its earned rate of return on common equity,



1 calculated as its net income applicable to common stock divided  
2 by the average of its beginning and ending balances of common  
3 equity using data reported in the electric utility's Form 1  
4 report to the Federal Energy Regulatory Commission but adjusted  
5 to remove the effects of accelerated depreciation or  
6 amortization or other transition or mitigation measures  
7 implemented by the electric utility pursuant to subsection (g)  
8 of this Section and the effect of any refund paid pursuant to  
9 subsection (e) of this Section, is below the 2-year average for  
10 the same 2 years of the monthly average yields of 30-year U.S.  
11 Treasury bonds published by the Board of Governors of the  
12 Federal Reserve System in its weekly H.15 Statistical Release  
13 or successor publication. The Commission shall review the  
14 electric utility's request, and may review the justness and  
15 reasonableness of all rates for tariffed services, in  
16 accordance with the provisions of Article IX of this Act,  
17 provided that the Commission shall consider any special or  
18 negotiated adjustments to the revenue requirement agreed to  
19 between the electric utility and the other parties to the  
20 proceeding. In setting rates under this Section, the Commission  
21 shall exclude the costs and revenues that are associated with  
22 competitive services and any billing or pricing experiments  
23 conducted under Section 16-106.

24 (e) For the purposes of this subsection (e) all  
25 calculations and comparisons shall be performed for the  
26 Illinois operations of multijurisdictional utilities. During

1 the mandatory transition period, notwithstanding the  
2 provisions of subsection (a), if the 2-year average of an  
3 electric utility's earned rate of return on common equity,  
4 calculated as its net income applicable to common stock divided  
5 by the average of its beginning and ending balances of common  
6 equity using data reported in the electric utility's Form 1  
7 report to the Federal Energy Regulatory Commission but adjusted  
8 to remove the effect of any refund paid under this subsection  
9 (e), and further adjusted to include the annual amortization of  
10 any difference between the consideration received by an  
11 affiliated interest of the electric utility in the sale of an  
12 asset which had been sold or transferred by the electric  
13 utility to the affiliated interest subsequent to the effective  
14 date of this amendatory Act of 1997 and the consideration for  
15 which such asset had been sold or transferred to the affiliated  
16 interest, with such difference to be amortized ratably from the  
17 date of the sale by the affiliated interest to December 31,  
18 2006, exceeds the 2-year average of the Index for the same 2  
19 years by 1.5 or more percentage points, the electric utility  
20 shall make refunds to customers beginning the first billing day  
21 of April in the following year in the manner described in  
22 paragraph (3) of this subsection. For purposes of this  
23 subsection (e), the "Index" shall be the sum of (A) the average  
24 for the 12 months ended September 30 of the monthly average  
25 yields of 30-year U.S. Treasury bonds published by the Board of  
26 Governors of the Federal Reserve System in its weekly H.15

1 Statistical Release or successor publication for each year 1998  
2 through 2006, and (B) (i) 4.00 percentage points for each of  
3 the 12-month periods ending September 30, 1998 through  
4 September 30, 1999 or 8.00 percentage points if the electric  
5 utility's average residential retail rate is less than or equal  
6 to 90% of the average residential retail rate for the "Midwest  
7 Utilities", as that term is defined in subsection (b) of this  
8 Section, based on data reported on Form 1 to the Federal Energy  
9 Regulatory Commission for calendar year 1995, and the electric  
10 utility served between 150,000 and 250,000 retail customers on  
11 January 1, 1995, (ii) 7.00 percentage points for each of the  
12 12-month periods ending September 30, 2000 through September  
13 30, 2006 if the electric utility was providing service to at  
14 least 1,000,000 customers in this State on January 1, 1999, or  
15 9.00 percentage points if the electric utility's average  
16 residential retail rate is less than or equal to 90% of the  
17 average residential retail rate for the "Midwest Utilities", as  
18 that term is defined in subsection (b) of this Section, based  
19 on data reported on Form 1 to the Federal Energy Regulatory  
20 Commission for calendar year 1995 and the electric utility  
21 served between 150,000 and 250,000 retail customers in this  
22 State on January 1, 1995, (iii) 11.00 percentage points for  
23 each of the 12-month periods ending September 30, 2000 through  
24 September 30, 2006, but only if the electric utility's average  
25 residential retail rate is less than or equal to 90% of the  
26 average residential retail rate for the "Midwest Utilities", as

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

1 Section 16-108(f) for entry of an order by the Commission  
2 authorizing the electric utility to implement transition  
3 charges for an additional period after December 31, 2006 or  
4 11.00 percentage points for each of the 12-month periods ending  
5 September 30, 2005 and September 30, 2006 for each electric  
6 utility providing service to fewer than 6,500, or between  
7 75,000 and 150,000, electric retail customers in this State on  
8 January 1, 1995 if such utility commits not to petition  
9 pursuant to Section 16-108(f) for entry of an order by the  
10 Commission authorizing the electric utility to implement  
11 transition charges for an additional period after December 31,  
12 2006.

13 (1) For purposes of this subsection (e), "excess  
14 earnings" means the difference between (A) the 2-year  
15 average of the electric utility's earned rate of return on  
16 common equity, less (B) the 2-year average of the sum of  
17 (i) the Index applicable to each of the 2 years and (ii)  
18 1.5 percentage points; provided, that "excess earnings"  
19 shall never be less than zero.

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

26 (3) If an electric utility has excess earnings,

1           determined in accordance with paragraphs (1) and (2) of  
2           this subsection, the refunds which the electric utility  
3           shall pay to its customers beginning the first billing day  
4           of April in the following year shall be calculated and  
5           applied as follows:

6                   (i) The electric utility's excess earnings shall  
7                   be multiplied by the average of the beginning and  
8                   ending balances of the electric utility's common  
9                   equity for the 2-year period in which excess earnings  
10                  occurred.

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

15                  (iii) The result of the calculation in (ii) shall  
16                  be divided by the sum of the electric utility's  
17                  projected total kilowatt-hour sales to retail  
18                  customers plus projected kilowatt-hours to be  
19                  delivered to delivery services customers over a one  
20                  year period beginning with the first billing date in  
21                  April in the succeeding year to determine a cents per  
22                  kilowatt-hour refund factor.

23                  (iv) The cents per kilowatt-hour refund factor  
24                  calculated in (iii) shall be credited to the electric  
25                  utility's customers by applying the factor on the  
26                  customer's monthly bills to each kilowatt-hour sold or

1 delivered until the total amount calculated in (ii) has  
2 been paid to customers.

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

8 (g) During the mandatory transition period, an electric  
9 utility may, without obtaining any approval of the Commission  
10 other than that provided for in this subsection and  
11 notwithstanding any other provision of this Act or any rule or  
12 regulation of the Commission that would require such approval:

13 (1) implement a reorganization, other than a merger of  
14 2 or more public utilities as defined in Section 3-105 or  
15 their holding companies;

16 (2) retire generating plants from service;

17 (3) sell, assign, lease or otherwise transfer assets to  
18 an affiliated or unaffiliated entity and as part of such  
19 transaction enter into service agreements, power purchase  
20 agreements, or other agreements with the transferee;  
21 provided, however, that the prices, terms and conditions of  
22 any power purchase agreement must be approved or allowed  
23 into effect by the Federal Energy Regulatory Commission; or

24 (4) use any accelerated cost recovery method including  
25 accelerated depreciation, accelerated amortization or  
26 other capital recovery methods, or record reductions to the

1 original cost of its assets.

2 In order to implement a reorganization, retire generating  
3 plants from service, or sell, assign, lease or otherwise  
4 transfer assets pursuant to this Section, the electric utility  
5 shall comply with subsections (c) and (d) of Section 16-128, if  
6 applicable, and subsection (k) of this Section, if applicable,  
7 and provide the Commission with at least 30 days notice of the  
8 proposed reorganization or transaction, which notice shall  
9 include the following information:

10 (i) a complete statement of the entries that the  
11 electric utility will make on its books and records of  
12 account to implement the proposed reorganization or  
13 transaction together with a certification from an  
14 independent certified public accountant that such  
15 entries are in accord with generally accepted  
16 accounting principles and, if the Commission has  
17 previously approved guidelines for cost allocations  
18 between the utility and its affiliates, a  
19 certification from the chief accounting officer of the  
20 utility that such entries are in accord with those cost  
21 allocation guidelines;

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

26 (iii) a list of all federal approvals or approvals



1 required from departments and agencies of this State,  
2 other than the Commission, that the electric utility  
3 has or will obtain before implementing the  
4 reorganization or transaction;

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

12 (v) if the electric utility proposes to sell,  
13 assign, lease or otherwise transfer a generating plant  
14 that brings the amount of net dependable generating  
15 capacity transferred pursuant to this subsection to an  
16 amount equal to or greater than 15% of the electric  
17 utility's net dependable capacity as of the effective  
18 date of this amendatory Act of 1997, and enters into a  
19 power purchase agreement with the entity to which such  
20 generating plant is sold, assigned, leased, or  
21 otherwise transferred, the electric utility also  
22 agrees, if its fuel adjustment clause has not already  
23 been eliminated, to eliminate its fuel adjustment  
24 clause in accordance with subsection (b) of Section  
25 9-220 for a period of time equal to the length of any  
26 such power purchase agreement or successor agreement,

1 or until January 1, 2005, whichever is longer; if the  
2 capacity of the generating plant so transferred and  
3 related power purchase agreement does not result in the  
4 elimination of the fuel adjustment clause under this  
5 subsection, and the fuel adjustment clause has not  
6 already been eliminated, the electric utility shall  
7 agree that the costs associated with the transferred  
8 plant that are included in the calculation of the rate  
9 per kilowatt-hour to be applied pursuant to the  
10 electric utility's fuel adjustment clause during such  
11 period shall not exceed the per kilowatt-hour cost  
12 associated with such generating plant included in the  
13 electric utility's fuel adjustment clause during the  
14 full calendar year preceding the transfer, with such  
15 limit to be adjusted each year thereafter by the Gross  
16 Domestic Product Implicit Price Deflator.

17 (vi) In addition, if the electric utility proposes  
18 to sell, assign, or lease, (A) either (1) an amount of  
19 generating plant that brings the amount of net  
20 dependable generating capacity transferred pursuant to  
21 this subsection to an amount equal to or greater than  
22 15% of its net dependable capacity on the effective  
23 date of this amendatory Act of 1997, or (2) one or more  
24 generating plants with a total net dependable capacity  
25 of 1100 megawatts, or (B) transmission and  
26 distribution facilities that either (1) bring the

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

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

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

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

22           (h) During the mandatory transition period, the Commission  
23 shall not establish or use any rates of depreciation, which for  
24 purposes of this subsection shall include amortization, for any  
25 electric utility other than those established pursuant to  
26 subsection (c) of Section 5-104 of this Act or utilized

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

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

1 transition costs as described in Section 16-128 which the  
2 electric utility is continuing to incur, including recovery of  
3 any unamortized portion of such costs previously incurred or  
4 committed, with such costs to be equitably allocated among  
5 bundled services, delivery services, and contracts with  
6 alternative retail electric suppliers; and (4) recovery of the  
7 costs associated with the electric utility's compliance with  
8 decommissioning funding requirements; and shall not consider  
9 any other revenues, costs, investments or cost of capital of  
10 either the electric utility or of any affiliate of the electric  
11 utility that are not associated with the provision of tariffed  
12 services. In setting rates for tariffed services, the  
13 Commission shall equitably allocate joint and common costs and  
14 investments between the electric utility's competitive and  
15 tariffed services. In determining the justness and  
16 reasonableness of the electric power and energy component of an  
17 electric utility's rates for tariffed services subsequent to  
18 the mandatory transition period and prior to the time that the  
19 provision of such electric power and energy is declared  
20 competitive, the Commission shall consider the extent to which  
21 the electric utility's tariffed rates for such component for  
22 each customer class exceed the market value determined pursuant  
23 to Section 16-112, and, if the electric power and energy  
24 component of such tariffed rate exceeds the market value by  
25 more than 10% for any customer class, may establish such  
26 electric power and energy component at a rate equal to the

1 market value plus 10%. In any such case, the Commission may  
2 also elect to extend the provisions of Section 16-111(e) for  
3 any period in which the electric utility is collecting  
4 transition charges, using information applicable to such  
5 period.

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



1 Commission shall issue an order within 14 days after the  
2 electric utility's filing approving, subject to receipt of  
3 approval from the Internal Revenue Service, the proposed  
4 transfer.

5 (k) If an electric utility is selling or transferring to a  
6 single buyer 5 or more generating plants located in this State  
7 with a total net dependable capacity of 5000 megawatts or more  
8 pursuant to subsection (g) of this Section and has obtained a  
9 sale price or consideration that exceeds 200% of the book value  
10 of such plants, the electric utility must provide to the  
11 Governor, the President of the Illinois Senate, the Minority  
12 Leader of the Illinois Senate, the Speaker of the Illinois  
13 House of Representatives, and the Minority Leader of the  
14 Illinois House of Representatives no later than 15 days after  
15 filing its notice under subsection (g) of this Section or 5  
16 days after the date on which this subsection (k) becomes law,  
17 whichever is later, a written commitment in which such electric  
18 utility agrees to expend \$2 billion outside the corporate  
19 limits of any municipality with 1,000,000 or more inhabitants  
20 within such electric utility's service area, over a 6-year  
21 period beginning with the calendar year in which the notice is  
22 filed, on projects, programs, and improvements within its  
23 service area relating to transmission and distribution  
24 including, without limitation, infrastructure expansion,  
25 repair and replacement, capital investments, operations and  
26 maintenance, and vegetation management.

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

3 (220 ILCS 5/16-113)

4 Sec. 16-113. Declaration of service as a competitive  
5 service.

6 (a) An electric utility may, by petition, request the  
7 Commission to declare a tariffed service provided by the  
8 electric utility to be a competitive service. The electric  
9 utility shall give notice of its petition to the public in the  
10 same manner that public notice is provided for proposed general  
11 increases in rates for tariffed services, in accordance with  
12 rules and regulations prescribed by the Commission. The  
13 Commission shall hold a hearing and ~~on the petition if a~~  
14 ~~hearing is deemed necessary by the Commission. The Commission~~  
15 shall declare the class of tariffed service to be a competitive  
16 service ~~for some identifiable customer segment or group of~~  
17 ~~customers, or some clearly defined geographical area~~ within the  
18 electric utility's service area, only after the electric  
19 utility demonstrates that at least 33% of the customers in the  
20 electric utility's service area that are eligible to take the  
21 class of tariffed service instead take service from alternative  
22 retail electric suppliers, as defined in Section 16-102, and  
23 that at least 3 alternative retail electric suppliers provide  
24 service that is comparable to the class of tariffed service to  
25 those customers in the utility's service area that do not take

1 service from the electric utility; ~~if the service or a~~  
2 ~~reasonably equivalent substitute service is reasonably~~  
3 ~~available to the customer segment or group or in the defined~~  
4 ~~geographical area at a comparable price from one or more~~  
5 ~~providers other than the electric utility or an affiliate of~~  
6 ~~the electric utility, and the electric utility has lost or~~  
7 ~~there is a reasonable likelihood that the electric utility will~~  
8 ~~lose business for the service to the other provider or~~  
9 ~~providers;~~ provided, that the Commission may not declare the  
10 provision of electric power and energy to be competitive  
11 pursuant to this subsection with respect to (i) any retail  
12 customer or group of retail customers that is not eligible  
13 pursuant to Section 16-104 to take delivery services provided  
14 by the electric utility and (ii) any residential and small  
15 commercial retail customers prior to the last date on which  
16 such customers are required to pay transition charges. In  
17 determining whether to grant or deny a petition to declare the  
18 provision of electric power and energy competitive, the  
19 Commission shall consider, in applying the above criteria,  
20 whether there is adequate transmission capacity into the  
21 service area of the petitioning electric utility to make  
22 electric power and energy reasonably available to the customer  
23 segment or group or in the defined geographical area from one  
24 or more providers other than the electric utility or an  
25 affiliate of the electric utility, in accordance with this  
26 subsection. The Commission shall make its determination and

1 issue its final order declaring or refusing to declare the  
2 service to be a competitive service within 180 ~~120~~ days  
3 following the date that the petition is filed, ~~or otherwise the~~  
4 ~~petition shall be deemed to be granted; provided, that if the~~  
5 ~~petition is deemed to be granted by operation of law, the~~  
6 ~~Commission shall not thereby be precluded from finding and~~  
7 ~~ordering, in a subsequent proceeding initiated by the~~  
8 ~~Commission, and after notice and hearing, that the service is~~  
9 ~~not competitive based on the criteria set forth in this~~  
10 ~~subsection.~~

11 (b) Any customer except a customer identified in subsection  
12 (c) of Section 16-103 who is taking a tariffed service that is  
13 declared to be a competitive service pursuant to subsection (a)  
14 of this Section shall be entitled to continue to take the  
15 service from the electric utility on a tariffed basis for a  
16 period of 3 years following the date that the service is  
17 declared competitive, or such other period as is stated in the  
18 electric utility's tariff pursuant to Section 16-110. This  
19 subsection shall not require the electric utility to offer or  
20 provide on a tariffed basis any service to any customer (except  
21 those customers identified in subsection (c) of Section 16-103)  
22 that was not taking such service on a tariffed basis on the  
23 date the service was declared to be competitive.

24 (c) If the Commission denies a petition to declare a  
25 service to be a competitive service, or determines in a  
26 separate proceeding that a service is not competitive based on

1 the criteria set forth in subsection (a), the electric utility  
2 may file a new petition no earlier than 6 months following the  
3 date of the Commission's order, requesting, on the basis of  
4 additional or different facts and circumstances, that the  
5 service be declared to be a competitive service.

6 (d) The Commission shall not deny a petition to declare a  
7 service to be a competitive service, and shall not find that a  
8 service is not a competitive service, on the grounds that it  
9 has previously denied the petition of another electric utility  
10 to declare the same or a similar service to be a competitive  
11 service or has previously determined that the same or a similar  
12 service provided by another electric utility is not a  
13 competitive service.

14 (e) An electric utility may declare a service, other than  
15 delivery services or the provision of electric power or energy,  
16 to be competitive by filing with the Commission at least 14  
17 days prior to the date on which the service is to become  
18 competitive a notice describing the service that is being  
19 declared competitive and the date on which it will become  
20 competitive; provided, that any customer who is taking a  
21 tariffed service that is declared to be a competitive service  
22 pursuant to this subsection (e) shall be entitled to continue  
23 to take the service from the electric utility on a tariffed  
24 basis until the electric utility files, and the Commission  
25 grants, a petition to declare the service competitive in  
26 accordance with subsection (a) of this Section. The Commission

1 shall be authorized to find and order, after notice and hearing  
2 in a subsequent proceeding initiated by the Commission, that  
3 any service declared to be competitive pursuant to this  
4 subsection (e) is not competitive in accordance with the  
5 criteria set forth in subsection (a) of this Section.

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

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