



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0070

Introduced 1/31/2007, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

See Index

Amends the Electric Service Customer Choice and Rate Relief Law of 1997 in the Public Utilities Act. Changes the definition of "mandatory transition period" to include the period from the effective date through the date on which the Illinois Commerce Commission has approved declarations of competitive service for all classes of service offered in the service areas of all electric utilities that, on December 31, 2005, served at least 100,000 customers. Requires the Commission to order certain utilities to file and implement tariffs to reinstate all 2006 rates within 10 days after the effective date. Prohibits the Commission from taking certain actions prior to 2010 with respect to (i) initiating, authorizing, or ordering any change by way of increase or (ii) in approving an application for a merger, imposing a condition requiring any filing for an increase, decrease, or change in or other review of a utility's rates or enforcing such a condition. Requires the Commission to hold a hearing on a petition by a utility requesting the Commission to declare a service to be competitive (now, the Commission shall hold a hearing if the Commission deems it necessary). Provides that the Commission shall only declare the class of service to be competitive according to certain criteria (now, the Commission is required to declare the service to be competitive if the service or a reasonably equivalent substitute is available at a reasonable price from other providers other than the utility or an affiliate and the utility has lost or is reasonably likely to lose business for service to other providers). Makes other changes. Effective immediately.

LRB095 05199 MJR 25272 b

FISCAL NOTE ACT
MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Public Utilities Act is amended by changing
5 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
17 that engages in the delivery or furnishing of electric power or
18 energy to such retail customers, and shall include, without
19 limitation, resellers, aggregators and power marketers, but
20 shall not include (i) electric utilities (or any agent of the
21 electric utility to the extent the electric utility provides
22 tariffed services to retail customers through that agent), (ii)
23 any electric cooperative or municipal system as defined in

1 Section 17-100 to the extent that the electric cooperative or
2 municipal system is serving retail customers within any area in
3 which it is or would be entitled to provide service under the
4 law in effect immediately prior to the effective date of this
5 amendatory Act of 1997, (iii) a public utility that is owned
6 and operated by any public institution of higher education of
7 this State, or a public utility that is owned by such public
8 institution of higher education and operated by any of its
9 lessees or operating agents, within any area in which it is or
10 would be entitled to provide service under the law in effect
11 immediately prior to the effective date of this amendatory Act
12 of 1997, (iv) a retail customer to the extent that customer
13 obtains its electric power and energy from that customer's own
14 cogeneration or self-generation facilities, (v) an entity that
15 owns, operates, sells, or arranges for the installation of a
16 customer's own cogeneration or self-generation facilities, but
17 only to the extent the entity is engaged in owning, selling or
18 arranging for the installation of such facility, or operating
19 the facility on behalf of such customer, provided however that
20 any such third party owner or operator of a facility built
21 after January 1, 1999, complies with the labor provisions of
22 Section 16-128(a) as though such third party were an
23 alternative retail electric supplier, or (vi) an industrial or
24 manufacturing customer that owns its own distribution
25 facilities, to the extent that the customer provides service
26 from that distribution system to a third-party contractor

1 located on the customer's premises that is integrally and
2 predominantly engaged in the customer's industrial or
3 manufacturing process; provided, that if the industrial or
4 manufacturing customer has elected delivery services, the
5 customer shall pay transition charges applicable to the
6 electric power and energy consumed by the third-party
7 contractor unless such charges are otherwise paid by the third
8 party contractor, which shall be calculated based on the usage
9 of, and the base rates or the contract rates applicable to, the
10 third-party contractor in accordance with Section 16-102.

11 "Base rates" means the rates for those tariffed services
12 that the electric utility is required to offer pursuant to
13 subsection (a) of Section 16-103 and that were identified in a
14 rate order for collection of the electric utility's base rate
15 revenue requirement, excluding (i) separate automatic rate
16 adjustment riders then in effect, (ii) special or negotiated
17 contract rates, (iii) delivery services tariffs filed pursuant
18 to Section 16-108, (iv) real-time pricing, or (v) tariffs that
19 were in effect prior to October 1, 1996 and that based charges
20 for services on an index or average of other utilities'
21 charges, but including (vi) any subsequent redesign of such
22 rates for tariffed services that is authorized by the
23 Commission after notice and hearing.

24 "Competitive service" includes (i) any service that has
25 been declared to be competitive pursuant to Section 16-113 of
26 this Act, (ii) contract service, and (iii) services, other than

1 tariffed services, that are related to, but not necessary for,
2 the provision of electric power and energy or delivery
3 services.

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

21 "Delivery services" means those services provided by the
22 electric utility that are necessary in order for the
23 transmission and distribution systems to function so that
24 retail customers located in the electric utility's service area
25 can receive electric power and energy from suppliers other than
26 the electric utility, and shall include, without limitation,

1 standard metering and billing services.

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

6 "Mandatory transition period" means the period from
7 December 16, 1997 (the effective date of Public Act 90-561)
8 ~~this amendatory Act of 1997~~ through January 1, 2007 and from
9 the effective date of this amendatory Act of the 95th General
10 Assembly through the date on which the Commission has approved
11 declarations of competitive service, pursuant to Section
12 16-113, for all classes of service offered in the service areas
13 of all electric utilities that, on December 31, 2005, served at
14 least 100,000 customers.

15 "Municipal system" shall have the meaning set forth in
16 Section 17-100.

17 "Real-time pricing" means tariffed retail charges for
18 delivered electric power and energy that vary hour-to-hour and
19 are determined from wholesale market prices using a methodology
20 approved by the Illinois Commerce Commission.

21 "Retail customer" means a single entity using electric
22 power or energy at a single premises and that (A) either (i) is
23 receiving or is eligible to receive tariffed services from an
24 electric utility, or (ii) that is served by a municipal system
25 or electric cooperative within any area in which the municipal
26 system or electric cooperative is or would be entitled to

1 provide service under the law in effect immediately prior to
2 the effective date of this amendatory Act of 1997, or (B) an
3 entity which on the effective date of this Act was receiving
4 electric service from a public utility and (i) was engaged in
5 the practice of resale and redistribution of such electricity
6 within a building prior to January 2, 1957, or (ii) was
7 providing lighting services to tenants in a multi-occupancy
8 building, but only to the extent such resale, redistribution or
9 lighting service is authorized by the electric utility's
10 tariffs that were on file with the Commission on the effective
11 date of this Act.

12 "Service area" means (i) the geographic area within which
13 an electric utility was lawfully entitled to provide electric
14 power and energy to retail customers as of the effective date
15 of this amendatory Act of 1997, and includes (ii) the location
16 of any retail customer to which the electric utility was
17 lawfully providing electric utility services on such effective
18 date.

19 "Small commercial retail customer" means those
20 nonresidential retail customers of an electric utility
21 consuming 15,000 kilowatt-hours or less of electricity
22 annually in its service area.

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

1 "Transition charge" means a charge expressed in cents per
2 kilowatt-hour that is calculated for a customer or class of
3 customers as follows for each year in which an electric utility
4 is entitled to recover transition charges as provided in
5 Section 16-108:

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

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

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

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

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

1 "mitigation factor":

2 (A) for nonresidential retail customers, an amount
3 equal to the greater of (i) 0.5 cents per kilowatt-hour
4 during the period October 1, 1999 through December 31,
5 2004, 0.6 cents per kilowatt-hour in calendar year
6 2005, and 0.9 cents per kilowatt-hour in calendar year
7 2006, multiplied in each year by the usage identified
8 in paragraph (1), or (ii) an amount equal to the
9 following percentages of the amount produced by
10 applying the applicable base rates (adjusted as
11 described in subparagraph (1)(B)) or contract rate to
12 the usage identified in paragraph (1): 8% for the
13 period October 1, 1999 through December 31, 2002, 10%
14 in calendar years 2003 and 2004, 11% in calendar year
15 2005 and 12% in calendar year 2006; and

16 (B) for residential retail customers, an amount
17 equal to the following percentages of the amount
18 produced by applying the base rates in effect on
19 October 1, 1996 (adjusted as described in subparagraph
20 (1)(B)) to the usage identified in paragraph (1): (i)
21 6% from May 1, 2002 through December 31, 2002, (ii) 7%
22 in calendar years 2003 and 2004, (iii) 8% in calendar
23 year 2005, and (iv) 10% in calendar year 2006;

24 (5) divided by the usage of such customers identified
25 in paragraph (1),

26 provided that the transition charge shall never be less than

1 zero.

2 "Unbundled service" means a component or constituent part
3 of a tariffed service which the electric utility subsequently
4 offers separately to its customers.

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

6 (220 ILCS 5/16-111)

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

9 (a) During the mandatory transition period,
10 notwithstanding any provision of Article IX of this Act, and
11 except as provided in subsections (b), (d), (e), and (f) of
12 this Section, the Commission shall order all electric utilities
13 that, on December 31, 2005, served at least 100,000 customers
14 to file and implement tariffs to reinstate all 2006 rates
15 within 10 days after the effective date of this amendatory Act
16 of the 95th General Assembly, and the Commission shall not,
17 prior to 2010, (i) initiate, authorize or order any change by
18 way of increase (other than in connection with a request for
19 rate increase which was filed after September 1, 1997 but prior
20 to October 15, 1997, by an electric utility serving less than
21 12,500 customers in this State) or (ii), ~~(ii) initiate or,~~
22 ~~unless requested by the electric utility, authorize or order~~
23 ~~any change by way of decrease, restructuring or unbundling~~
24 ~~(except as provided in Section 16-109A), in the rates of any~~
25 ~~electric utility that were in effect on October 1, 1996, or~~

1 ~~(iii)~~ in any order approving any application for a merger
2 pursuant to Section 7-204 that was pending as of May 16, 1997,
3 impose any condition requiring any filing for an increase,
4 decrease, or change in, or other review of, an electric
5 utility's rates or enforce any such condition of any such
6 order; provided, however, that this subsection shall not
7 prohibit the Commission from:

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

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

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

1 services tariffs in accordance with Section 16-109; or

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

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

23 (a-5) During the remainder of the mandatory transition
24 period, if any, the Commission may modify rates in accordance
25 with Article IX of this Act.

26 (b) Notwithstanding the provisions of subsection (a), each

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

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

1 customers by 2% from the base rate in effect immediately prior
2 to January 1, 1998; and (iii) reducing, effective October 1,
3 2002, each component of its base rates to residential retail
4 customers by 1% from the base rates in effect immediately prior
5 to January 1, 1998. Provided, further, that any electric
6 utility for which a decrease in base rates has been or is
7 placed into effect between October 1, 1996 and the dates
8 specified in the preceding sentences of this subsection, other
9 than pursuant to the requirements of this subsection, shall be
10 entitled to reduce the amount of any reduction or reductions in
11 its base rates required by this subsection by the amount of
12 such other decrease. The tariffs required under this subsection
13 shall be filed 45 days in advance of the effective date.
14 Notwithstanding anything to the contrary in Section 9-220 of
15 this Act, no restatement of base rates in conjunction with the
16 elimination of a fuel adjustment clause under that Section
17 shall result in a lesser decrease in base rates than customers
18 would otherwise receive under this subsection had the electric
19 utility's fuel adjustment clause not been eliminated.

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

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

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

14 (d) During the mandatory transition period, but not before
15 January 1, 2000, and notwithstanding the provisions of
16 subsection (a), an electric utility may request an increase in
17 its base rates if the electric utility demonstrates that the
18 2-year average of its earned rate of return on common equity,
19 calculated as its net income applicable to common stock divided
20 by the average of its beginning and ending balances of common
21 equity using data reported in the electric utility's Form 1
22 report to the Federal Energy Regulatory Commission but adjusted
23 to remove the effects of accelerated depreciation or
24 amortization or other transition or mitigation measures
25 implemented by the electric utility pursuant to subsection (g)
26 of this Section and the effect of any refund paid pursuant to

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

16 (e) For the purposes of this subsection (e) all
17 calculations and comparisons shall be performed for the
18 Illinois operations of multijurisdictional utilities. During
19 the mandatory transition period, notwithstanding the
20 provisions of subsection (a), if the 2-year average of an
21 electric utility's earned rate of return on common equity,
22 calculated as its net income applicable to common stock divided
23 by the average of its beginning and ending balances of common
24 equity using data reported in the electric utility's Form 1
25 report to the Federal Energy Regulatory Commission but adjusted
26 to remove the effect of any refund paid under this subsection

1 (e), and further adjusted to include the annual amortization of
2 any difference between the consideration received by an
3 affiliated interest of the electric utility in the sale of an
4 asset which had been sold or transferred by the electric
5 utility to the affiliated interest subsequent to the effective
6 date of this amendatory Act of 1997 and the consideration for
7 which such asset had been sold or transferred to the affiliated
8 interest, with such difference to be amortized ratably from the
9 date of the sale by the affiliated interest to December 31,
10 2006, exceeds the 2-year average of the Index for the same 2
11 years by 1.5 or more percentage points, the electric utility
12 shall make refunds to customers beginning the first billing day
13 of April in the following year in the manner described in
14 paragraph (3) of this subsection. For purposes of this
15 subsection (e), the "Index" shall be the sum of (A) the average
16 for the 12 months ended September 30 of the monthly average
17 yields of 30-year U.S. Treasury bonds published by the Board of
18 Governors of the Federal Reserve System in its weekly H.15
19 Statistical Release or successor publication for each year 1998
20 through 2006, and (B) (i) 4.00 percentage points for each of
21 the 12-month periods ending September 30, 1998 through
22 September 30, 1999 or 8.00 percentage points if the electric
23 utility's average residential retail rate is less than or equal
24 to 90% of the average residential retail rate for the "Midwest
25 Utilities", as that term is defined in subsection (b) of this
26 Section, based on data reported on Form 1 to the Federal Energy

1 Regulatory Commission for calendar year 1995, and the electric
2 utility served between 150,000 and 250,000 retail customers on
3 January 1, 1995, (ii) 7.00 percentage points for each of the
4 12-month periods ending September 30, 2000 through September
5 30, 2006 if the electric utility was providing service to at
6 least 1,000,000 customers in this State on January 1, 1999, or
7 9.00 percentage points if the electric utility's average
8 residential retail rate is less than or equal to 90% of the
9 average residential retail rate for the "Midwest Utilities", as
10 that term is defined in subsection (b) of this Section, based
11 on data reported on Form 1 to the Federal Energy Regulatory
12 Commission for calendar year 1995 and the electric utility
13 served between 150,000 and 250,000 retail customers in this
14 State on January 1, 1995, (iii) 11.00 percentage points for
15 each of the 12-month periods ending September 30, 2000 through
16 September 30, 2006, but only if the electric utility's average
17 residential retail rate is less than or equal to 90% of the
18 average residential retail rate for the "Midwest Utilities", as
19 that term is defined in subsection (b) of this Section, based
20 on data reported on Form 1 to the Federal Energy Regulatory
21 Commission for calendar year 1995, the electric utility served
22 between 150,000 and 250,000 retail customers in this State on
23 January 1, 1995, and the electric utility offers delivery
24 services on or before June 1, 2000 to retail customers whose
25 annual electric energy use comprises 33% of the kilowatt hour
26 sales to that group of retail customers that are classified

1 under Division D, Groups 20 through 39 of the Standard
2 Industrial Classifications set forth in the Standard
3 Industrial Classification Manual published by the United
4 States Office of Management and Budget, excluding the kilowatt
5 hour sales to those customers that are eligible for delivery
6 services pursuant to Section 16-104(a)(1)(i), and offers
7 delivery services to its remaining retail customers classified
8 under Division D, Groups 20 through 39 on or before October 1,
9 2000, and, provided further, that the electric utility commits
10 not to petition pursuant to Section 16-108(f) for entry of an
11 order by the Commission authorizing the electric utility to
12 implement transition charges for an additional period after
13 December 31, 2006, or (iv) 5.00 percentage points for each of
14 the 12-month periods ending September 30, 2000 through
15 September 30, 2006 for all other electric utilities or 7.00
16 percentage points for such utilities for each of the 12-month
17 periods ending September 30, 2000 through September 30, 2006
18 for any such utility that commits not to petition pursuant to
19 Section 16-108(f) for entry of an order by the Commission
20 authorizing the electric utility to implement transition
21 charges for an additional period after December 31, 2006 or
22 11.00 percentage points for each of the 12-month periods ending
23 September 30, 2005 and September 30, 2006 for each electric
24 utility providing service to fewer than 6,500, or between
25 75,000 and 150,000, electric retail customers in this State on
26 January 1, 1995 if such utility commits not to petition

1 pursuant to Section 16-108(f) for entry of an order by the
2 Commission authorizing the electric utility to implement
3 transition charges for an additional period after December 31,
4 2006.

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

12 (2) On or before March 31 of each year 2000 through
13 2007 each electric utility shall file a report with the
14 Commission showing its earned rate of return on common
15 equity, calculated in accordance with this subsection, for
16 the preceding calendar year and the average for the
17 preceding 2 calendar years.

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

24 (i) The electric utility's excess earnings shall
25 be multiplied by the average of the beginning and
26 ending balances of the electric utility's common

1 equity for the 2-year period in which excess earnings
2 occurred.

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

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

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

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

26 (g) During the mandatory transition period, an electric

1 utility may, without obtaining any approval of the Commission
2 other than that provided for in this subsection and
3 notwithstanding any other provision of this Act or any rule or
4 regulation of the Commission that would require such approval:

5 (1) implement a reorganization, other than a merger of
6 2 or more public utilities as defined in Section 3-105 or
7 their holding companies;

8 (2) retire generating plants from service;

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

16 (4) use any accelerated cost recovery method including
17 accelerated depreciation, accelerated amortization or
18 other capital recovery methods, or record reductions to the
19 original cost of its assets.

20 In order to implement a reorganization, retire generating
21 plants from service, or sell, assign, lease or otherwise
22 transfer assets pursuant to this Section, the electric utility
23 shall comply with subsections (c) and (d) of Section 16-128, if
24 applicable, and subsection (k) of this Section, if applicable,
25 and provide the Commission with at least 30 days notice of the
26 proposed reorganization or transaction, which notice shall

1 include the following information:

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

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

18 (iii) a list of all federal approvals or approvals
19 required from departments and agencies of this State,
20 other than the Commission, that the electric utility
21 has or will obtain before implementing the
22 reorganization or transaction;

23 (iv) an irrevocable commitment by the electric
24 utility that it will not, as a result of the
25 transaction, impose any stranded cost charges that it
26 might otherwise be allowed to charge retail customers

1 under federal law or increase the transition charges
2 that it is otherwise entitled to collect under this
3 Article XVI; and

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

1 per kilowatt-hour to be applied pursuant to the
2 electric utility's fuel adjustment clause during such
3 period shall not exceed the per kilowatt-hour cost
4 associated with such generating plant included in the
5 electric utility's fuel adjustment clause during the
6 full calendar year preceding the transfer, with such
7 limit to be adjusted each year thereafter by the Gross
8 Domestic Product Implicit Price Deflator.

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

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

1 shall be entered, within 90 days after the date the
2 electric utility's notice was filed. Provided,
3 however, that a sale, assignment, or lease of
4 transmission facilities to an independent system
5 operator that meets the requirements of Section 16-126
6 shall not be subject to Commission approval under this
7 Section.

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

19 The Commission shall not in any subsequent proceeding or
20 otherwise, review such a reorganization or other transaction
21 authorized by this Section, but shall retain the authority to
22 allocate costs as stated in Section 16-111(i). An entity to
23 which an electric utility sells, assigns, leases or transfers
24 assets pursuant to this subsection (g) shall not, as a result
25 of the transactions specified in this subsection (g), be deemed
26 a public utility as defined in Section 3-105. Nothing in this

1 subsection (g) shall change any requirement under the
2 jurisdiction of the Illinois Department of Nuclear Safety
3 including, but not limited to, the payment of fees. Nothing in
4 this subsection (g) shall exempt a utility from obtaining a
5 certificate pursuant to Section 8-406 of this Act for the
6 construction of a new electric generating facility. Nothing in
7 this subsection (g) is intended to exempt the transactions
8 hereunder from the operation of the federal or State antitrust
9 laws. Nothing in this subsection (g) shall require an electric
10 utility to use the procedures specified in this subsection for
11 any of the transactions specified herein. Any other procedure
12 available under this Act may, at the electric utility's
13 election, be used for any such transaction.

14 (h) During the mandatory transition period, the Commission
15 shall not establish or use any rates of depreciation, which for
16 purposes of this subsection shall include amortization, for any
17 electric utility other than those established pursuant to
18 subsection (c) of Section 5-104 of this Act or utilized
19 pursuant to subsection (g) of this Section. Provided, however,
20 that in any proceeding to review an electric utility's rates
21 for tariffed services pursuant to Section 9-201, 9-202, 9-250
22 or 16-111(d) of this Act, the Commission may establish new
23 rates of depreciation for the electric utility in the same
24 manner provided in subsection (d) of Section 5-104 of this Act.
25 An electric utility implementing an accelerated cost recovery
26 method including accelerated depreciation, accelerated

1 amortization or other capital recovery methods, or recording
2 reductions to the original cost of its assets, pursuant to
3 subsection (g) of this Section, shall file a statement with the
4 Commission describing the accelerated cost recovery method to
5 be implemented or the reduction in the original cost of its
6 assets to be recorded. Upon the filing of such statement, the
7 accelerated cost recovery method or the reduction in the
8 original cost of assets shall be deemed to be approved by the
9 Commission as though an order had been entered by the
10 Commission.

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

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

24 (j) During the mandatory transition period, an electric
25 utility may elect to transfer to a non-operating income account
26 under the Commission's Uniform System of Accounts either or

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

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

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

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

21 (220 ILCS 5/16-113)

22 Sec. 16-113. Declaration of service as a competitive
23 service.

24 (a) An electric utility may, by petition, request the
25 Commission to declare a tariffed service provided by the

1 electric utility to be a competitive service. The electric
2 utility shall give notice of its petition to the public in the
3 same manner that public notice is provided for proposed general
4 increases in rates for tariffed services, in accordance with
5 rules and regulations prescribed by the Commission. The
6 Commission shall hold a hearing and ~~on the petition if a~~
7 ~~hearing is deemed necessary by the Commission. The Commission~~
8 shall declare the class of tariffed service to be a competitive
9 service ~~for some identifiable customer segment or group of~~
10 ~~customers, or some clearly defined geographical area within the~~
11 electric utility's service area, only after the electric
12 utility demonstrates that at least 33% of the customers in the
13 electric utility's service area that are eligible to take the
14 class of tariffed service instead take service from alternative
15 retail electric suppliers, as defined in Section 16-102, and
16 that at least 3 alternative retail electric suppliers provide
17 service that is comparable to the class of tariffed service to
18 those customers in the utility's service area that do not take
19 service from the electric utility; ~~if the service or a~~
20 ~~reasonably equivalent substitute service is reasonably~~
21 ~~available to the customer segment or group or in the defined~~
22 ~~geographical area at a comparable price from one or more~~
23 ~~providers other than the electric utility or an affiliate of~~
24 ~~the electric utility, and the electric utility has lost or~~
25 ~~there is a reasonable likelihood that the electric utility will~~
26 ~~lose business for the service to the other provider or~~

1 ~~providers,~~ provided, that the Commission may not declare the
2 provision of electric power and energy to be competitive
3 pursuant to this subsection with respect to (i) any retail
4 customer or group of retail customers that is not eligible
5 pursuant to Section 16-104 to take delivery services provided
6 by the electric utility and (ii) any residential and small
7 commercial retail customers prior to the last date on which
8 such customers are required to pay transition charges. In
9 determining whether to grant or deny a petition to declare the
10 provision of electric power and energy competitive, the
11 Commission shall consider, in applying the above criteria,
12 whether there is adequate transmission capacity into the
13 service area of the petitioning electric utility to make
14 electric power and energy reasonably available to the customer
15 segment or group or in the defined geographical area from one
16 or more providers other than the electric utility or an
17 affiliate of the electric utility, in accordance with this
18 subsection. The Commission shall make its determination and
19 issue its final order declaring or refusing to declare the
20 service to be a competitive service within 180 ~~120~~ days
21 following the date that the petition is filed, ~~or otherwise the~~
22 ~~petition shall be deemed to be granted; provided, that if the~~
23 ~~petition is deemed to be granted by operation of law, the~~
24 ~~Commission shall not thereby be precluded from finding and~~
25 ~~ordering, in a subsequent proceeding initiated by the~~
26 ~~Commission, and after notice and hearing, that the service is~~

1 ~~not competitive based on the criteria set forth in this~~
2 ~~subsection.~~

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

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

24 (d) The Commission shall not deny a petition to declare a
25 service to be a competitive service, and shall not find that a
26 service is not a competitive service, on the grounds that it

1 has previously denied the petition of another electric utility
2 to declare the same or a similar service to be a competitive
3 service or has previously determined that the same or a similar
4 service provided by another electric utility is not a
5 competitive service.

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

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

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

1 INDEX

2 Statutes amended in order of appearance

3 220 ILCS 5/16-102

4 220 ILCS 5/16-111

5 220 ILCS 5/16-113