



Sen. Gary Forby

Filed: 3/13/2007

09500SB1592sam001

LRB095 11114 MJR 33539 a

1 AMENDMENT TO SENATE BILL 1592

2 AMENDMENT NO. _____. Amend Senate Bill 1592 by replacing
3 everything after the enacting clause with the following:

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

6 (220 ILCS 5/16-102)

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

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

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

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

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

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

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

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

1 1997 and filed with the Commission.

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

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

13 "Mandatory transition period" means the period from
14 December 16, 1997 (the effective date of Public Act 90-561)
15 ~~this amendatory Act of 1997~~ through January 1, 2007 and from
16 the effective date of this amendatory Act of the 95th General
17 Assembly through the date on which the Commission has approved
18 declarations of competitive service, pursuant to Section
19 16-113, for all classes of service offered in the service areas
20 of all electric utilities that, on December 31, 2005, served at
21 least 100,000 but fewer than 2 million residential 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 but fewer than 2,000,000 in this State to file and implement
22 tariffs (A) to reinstate all rates charged to the electric
23 utilities' customers on December 31, 2006, within 10 days after
24 the effective date of this amendatory Act of the 95th General
25 Assembly and (B) to refund to the utilities' residential

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

1 or other review of, an electric utility's rates or enforce any
2 such condition of any such order. However, ~~provided, however,~~
3 ~~that~~ this subsection shall not prohibit the Commission from:

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

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

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

24 (4) ordering or allowing into effect any tariff to
25 recover charges pursuant to Sections 9-201.5, 9-220.1,
26 9-221, 9-222 (except as provided in Section 9-222.1),

1 16-108, and 16-114 of this Act, Section 5-5 of the
2 Electricity Infrastructure Maintenance Fee Law, Section
3 6-5 of the Renewable Energy, Energy Efficiency, and Coal
4 Resources Development Law of 1997, and Section 13 of the
5 Energy Assistance Act.

6 After December 31, 2004, the provisions of this subsection
7 (a) shall not apply to an electric utility whose average
8 residential retail rate was 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 which served between
13 150,000 and 250,000 retail customers in this State on January
14 1, 1995 unless the electric utility or its holding company has
15 been acquired by or merged with an affiliate of another
16 electric utility subsequent to January 1, 2002. This exemption
17 shall be limited to this subsection (a) and shall not extend to
18 any other provisions of this Act.

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

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

1 prior to January 1, 1998 and (ii) if the public utility
2 provides electric service to (A) more than 500,000 customers
3 but less than 1,000,000 customers in this State on January 1,
4 1999, reducing, effective May 1, 2002, each component of its
5 base rates to residential retail customers by an additional 5%
6 from the base rates in effect immediately prior to January 1,
7 1998, or (B) at least 1,000,000 customers in this State on
8 January 1, 1999, reducing, effective October 1, 2001, each
9 component of its base rates to residential retail customers by
10 an additional 5% from the base rates in effect immediately
11 prior to January 1, 1998. Provided, however, that (A) if an
12 electric utility's average residential retail rate is less than
13 or equal to the average residential retail rate for a group of
14 Midwest Utilities (consisting of all investor-owned electric
15 utilities with annual system peaks in excess of 1000 megawatts
16 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,
17 Missouri, Ohio, and Wisconsin), based on data reported on Form
18 1 to the Federal Energy Regulatory Commission for calendar year
19 1995, then it shall only be required to file tariffs (i)
20 reducing, effective August 1, 1998, each component of its base
21 rates to residential retail customers by 5% from the base rates
22 in effect immediately prior to January 1, 1998, (ii) reducing,
23 effective October 1, 2000, each component of its base rates to
24 residential retail customers by the lesser of 5% of the base
25 rates in effect immediately prior to January 1, 1998 or the
26 percentage by which the electric utility's average residential

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

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

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

1 Customer Choice and Rate Relief Law of 1997 passed by the
2 Illinois General Assembly."

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

10 (d) During the mandatory transition period, but not before
11 January 1, 2010 ~~2000~~, ~~and notwithstanding the provisions of~~
12 ~~subsection (a)~~, an electric utility may request an increase in
13 its base rates if the electric utility demonstrates that the
14 2-year average of its earned rate of return on common equity,
15 calculated as its net income applicable to common stock divided
16 by the average of its beginning and ending balances of common
17 equity using data reported in the electric utility's Form 1
18 report to the Federal Energy Regulatory Commission but adjusted
19 to remove the effects of accelerated depreciation or
20 amortization or other transition or mitigation measures
21 implemented by the electric utility pursuant to subsection (g)
22 of this Section and the effect of any refund paid pursuant to
23 subsection (e) of this Section, is below the 2-year average for
24 the same 2 years of the monthly average yields of 30-year U.S.
25 Treasury bonds published by the Board of Governors of the
26 Federal Reserve System in its weekly H.15 Statistical Release

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

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

1 utility to the affiliated interest subsequent to the effective
2 date of this amendatory Act of 1997 and the consideration for
3 which such asset had been sold or transferred to the affiliated
4 interest, with such difference to be amortized ratably from the
5 date of the sale by the affiliated interest to December 31,
6 2006, exceeds the 2-year average of the Index for the same 2
7 years by 1.5 or more percentage points, the electric utility
8 shall make refunds to customers beginning the first billing day
9 of April in the following year in the manner described in
10 paragraph (3) of this subsection. For purposes of this
11 subsection (e), the "Index" shall be the sum of (A) the average
12 for the 12 months ended September 30 of the monthly average
13 yields of 30-year U.S. Treasury bonds published by the Board of
14 Governors of the Federal Reserve System in its weekly H.15
15 Statistical Release or successor publication for each year 1998
16 through 2006, and (B) (i) 4.00 percentage points for each of
17 the 12-month periods ending September 30, 1998 through
18 September 30, 1999 or 8.00 percentage points if the electric
19 utility's average residential retail rate is less than or equal
20 to 90% of the average residential retail rate for the "Midwest
21 Utilities", as that term is defined in subsection (b) of this
22 Section, based on data reported on Form 1 to the Federal Energy
23 Regulatory Commission for calendar year 1995, and the electric
24 utility served between 150,000 and 250,000 retail customers on
25 January 1, 1995, (ii) 7.00 percentage points for each of the
26 12-month periods ending September 30, 2000 through September

1 30, 2006 if the electric utility was providing service to at
2 least 1,000,000 customers in this State on January 1, 1999, or
3 9.00 percentage points if the electric utility's average
4 residential retail rate is less than or equal to 90% of the
5 average residential retail rate for the "Midwest Utilities", as
6 that term is defined in subsection (b) of this Section, based
7 on data reported on Form 1 to the Federal Energy Regulatory
8 Commission for calendar year 1995 and the electric utility
9 served between 150,000 and 250,000 retail customers in this
10 State on January 1, 1995, (iii) 11.00 percentage points for
11 each of the 12-month periods ending September 30, 2000 through
12 September 30, 2006, but only if the electric utility's average
13 residential retail rate is less than or equal to 90% of the
14 average residential retail rate for the "Midwest Utilities", as
15 that term is defined in subsection (b) of this Section, based
16 on data reported on Form 1 to the Federal Energy Regulatory
17 Commission for calendar year 1995, the electric utility served
18 between 150,000 and 250,000 retail customers in this State on
19 January 1, 1995, and the electric utility offers delivery
20 services on or before June 1, 2000 to retail customers whose
21 annual electric energy use comprises 33% of the kilowatt hour
22 sales to that group of retail customers that are classified
23 under Division D, Groups 20 through 39 of the Standard
24 Industrial Classifications set forth in the Standard
25 Industrial Classification Manual published by the United
26 States Office of Management and Budget, excluding the kilowatt

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

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

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

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

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

25 (ii) The result of the calculation in (i) shall be
26 multiplied by 0.50 and then divided by a number equal

1 to 1 minus the electric utility's composite federal and
2 State income tax rate.

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

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

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

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

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

4 (2) retire generating plants from service;

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

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

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

24 (i) a complete statement of the entries that the
25 electric utility will make on its books and records of
26 account to implement the proposed reorganization or

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

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

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

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

26 (v) if the electric utility proposes to sell,

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

1 electric utility's fuel adjustment clause during the
2 full calendar year preceding the transfer, with such
3 limit to be adjusted each year thereafter by the Gross
4 Domestic Product Implicit Price Deflator.

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

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

1 operator that meets the requirements of Section 16-126
2 shall not be subject to Commission approval under this
3 Section.

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

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

1 certificate pursuant to Section 8-406 of this Act for the
2 construction of a new electric generating facility. Nothing in
3 this subsection (g) is intended to exempt the transactions
4 hereunder from the operation of the federal or State antitrust
5 laws. Nothing in this subsection (g) shall require an electric
6 utility to use the procedures specified in this subsection for
7 any of the transactions specified herein. Any other procedure
8 available under this Act may, at the electric utility's
9 election, be used for any such transaction.

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

1 be implemented or the reduction in the original cost of its
2 assets to be recorded. Upon the filing of such statement, the
3 accelerated cost recovery method or the reduction in the
4 original cost of assets shall be deemed to be approved by the
5 Commission as though an order had been entered by the
6 Commission.

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

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

20 (j) During the mandatory transition period, an electric
21 utility may elect to transfer to a non-operating income account
22 under the Commission's Uniform System of Accounts either or
23 both of (i) an amount of unamortized investment tax credit that
24 is in addition to the ratable amount which is credited to the
25 electric utility's operating income account for the year in
26 accordance with Section 46(f)(2) of the federal Internal

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

19 (k) If an electric utility is selling or transferring to a
20 single buyer 5 or more generating plants located in this State
21 with a total net dependable capacity of 5000 megawatts or more
22 pursuant to subsection (g) of this Section and has obtained a
23 sale price or consideration that exceeds 200% of the book value
24 of such plants, the electric utility must provide to the
25 Governor, the President of the Illinois Senate, the Minority
26 Leader of the Illinois Senate, the Speaker of the Illinois

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

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

17 (220 ILCS 5/16-113)

18 Sec. 16-113. Declaration of service as a competitive
19 service.

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

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

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

25 (b) Any customer except a customer identified in subsection

26 (c) of Section 16-103 who is taking a tariffed service that is

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

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

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

1 competitive service.

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

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

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