

1 were in effect on October 1, 1996, or (iii) in any order
2 approving any application for a merger pursuant to Section
3 7-204 that was pending as of May 16, 1997, impose any
4 condition requiring any filing for an increase, decrease, or
5 change in, or other review of, an electric utility's rates or
6 enforce any such condition of any such order; provided,
7 however, that this subsection shall not prohibit the
8 Commission from:

9 (1) approving the application of an electric
10 utility to implement an alternative to rate of return
11 regulation or a regulatory mechanism that rewards or
12 penalizes the electric utility through adjustment of
13 rates based on utility performance, pursuant to Section
14 9-244;

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

23 (3) ordering into effect tariffs for delivery
24 services and transition charges in accordance with
25 Sections 16-104 and 16-108, for real-time pricing in
26 accordance with Section 16-107, or the options required
27 by Section 16-110 and subsection (n) of 16-112, allowing
28 a billing experiment in accordance with Section 16-106,
29 or modifying delivery services tariffs in accordance with
30 Section 16-109; or

31 (4) ordering or allowing into effect any tariff to
32 recover charges pursuant to Sections 9-201.5, 9-220.1,
33 9-221, 9-222 (except as provided in Section 9-222.1),
34 16-108, and 16-114 of this Act, Section 5-5 of the

1 Electricity Infrastructure Maintenance Fee Law, Section
2 6-5 of the Renewable Energy, Energy Efficiency, and Coal
3 Resources Development Law of 1997, and Section 13 of the
4 Energy Assistance Act of 1989.

5 After December 31, 2004, the provisions of this
6 subsection (a) shall not apply to an electric utility whose
7 average residential retail rate was less than or equal to 90%
8 of the average residential retail rate for the "Midwest
9 Utilities", as that term is defined in subsection (b) of this
10 Section, based on data reported on Form 1 to the Federal
11 Energy Regulatory Commission for calendar year 1995, and
12 which served between 150,000 and 250,000 retail customers in
13 this State on January 1, 1995.

14 (b) Notwithstanding the provisions of subsection (a),
15 each Illinois electric utility serving more than 12,500
16 customers in Illinois shall file tariffs (i) reducing,
17 effective August 1, 1998, each component of its base rates to
18 residential retail customers by 15% from the base rates in
19 effect immediately prior to January 1, 1998 and (ii) if the
20 public utility provides electric service to (A) more than
21 500,000 customers but less than 1,000,000 customers in this
22 State on January 1, 1999, reducing, effective May 1, 2002,
23 each component of its base rates to residential retail
24 customers by an additional 5% from the base rates in effect
25 immediately prior to January 1, 1998, or (B) at least
26 1,000,000 customers in this State on January 1, 1999,
27 reducing, effective October 1, 2001, each component of its
28 base rates to residential retail customers by an additional
29 5% from the base rates in effect immediately prior to January
30 1, 1998. Provided, however, that (A) if an electric utility's
31 average residential retail rate is less than or equal to the
32 average residential retail rate for a group of Midwest
33 Utilities (consisting of all investor-owned electric
34 utilities with annual system peaks in excess of 1000

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

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

22 (c) Any utility reducing its base rates by 15% on August
23 1, 1998 pursuant to subsection (b) shall include the
24 following statement on its bills for residential customers
25 from August 1 through December 31, 1998: "Effective August 1,
26 1998, your rates have been reduced by 15% by the Electric
27 Service Customer Choice and Rate Relief Law of 1997 passed by
28 the Illinois General Assembly.". Any utility reducing its
29 base rates by 5% on August 1, 1998, pursuant to subsection
30 (b) shall include the following statement on its bills for
31 residential customers from August 1 through December 31,
32 1998: "Effective August 1, 1998, your rates have been
33 reduced by 5% by the Electric Service Customer Choice and
34 Rate Relief Law of 1997 passed by the Illinois General

1 Assembly.".

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

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

1 Commission shall exclude the costs and revenues that are
2 associated with competitive services and any billing or
3 pricing experiments conducted under Section 16-106.

4 (e) For the purposes of this subsection (e) all
5 calculations and comparisons shall be performed for the
6 Illinois operations of multijurisdictional utilities. During
7 the mandatory transition period, notwithstanding the
8 provisions of subsection (a), if the 2-year average of an
9 electric utility's earned rate of return on common equity,
10 calculated as its net income applicable to common stock
11 divided by the average of its beginning and ending balances
12 of common equity using data reported in the electric
13 utility's Form 1 report to the Federal Energy Regulatory
14 Commission but adjusted to remove the effect of any refund
15 paid under this subsection (e), and further adjusted to
16 include the annual amortization of any difference between the
17 consideration received by an affiliated interest of the
18 electric utility in the sale of an asset which had been sold
19 or transferred by the electric utility to the affiliated
20 interest subsequent to the effective date of this amendatory
21 Act of 1997 and the consideration for which such asset had
22 been sold or transferred to the affiliated interest, with
23 such difference to be amortized ratably from the date of the
24 sale by the affiliated interest to December 31, 2006, exceeds
25 the 2-year average of the Index for the same 2 years by 1.5
26 or more percentage points, the electric utility shall make
27 refunds to customers beginning the first billing day of April
28 in the following year in the manner described in paragraph
29 (3) of this subsection. For purposes of this subsection (e),
30 the "Index" shall be the sum of (A) the average for the 12
31 months ended September 30 of the monthly average yields of
32 30-year U.S. Treasury bonds published by the Board of
33 Governors of the Federal Reserve System in its weekly H.15
34 Statistical Release or successor publication for each year

1 1998 through 2004, and (B) (i) 4.00 percentage points for
2 each of the 12-month periods ending September 30, 1998
3 through September 30, 1999 or 8.00 percentage points if the
4 electric utility's average residential retail rate is less
5 than or equal to 90% of the average residential retail rate
6 for the "Midwest Utilities", as that term is defined in
7 subsection (b) of this Section, based on data reported on
8 Form 1 to the Federal Energy Regulatory Commission for
9 calendar year 1995, and the electric utility served between
10 150,000 and 250,000 retail customers on January 1, 1995, (ii)
11 7.00 percentage points for each of the 12-month periods
12 ending September 30, 2000 through September 30, 2004 if the
13 electric utility was providing service to at least 1,000,000
14 customers in this State on January 1, 1999, or 9.00
15 percentage points if the electric utility's average
16 residential retail rate is less than or equal to 90% of the
17 average residential retail rate for the "Midwest Utilities",
18 as that term is defined in subsection (b) of this Section,
19 based on data reported on Form 1 to the Federal Energy
20 Regulatory Commission for calendar year 1995 and the electric
21 utility served between 150,000 and 250,000 retail customers
22 in this State on January 1, 1995, (iii) 11.00 percentage
23 points for each of the 12-month periods ending September 30,
24 2000 through September 30, 2004, but only if the electric
25 utility's average residential retail rate is less than or
26 equal to 90% of the average residential retail rate for the
27 "Midwest Utilities", as that term is defined in subsection
28 (b) of this Section, based on data reported on Form 1 to the
29 Federal Energy Regulatory Commission for calendar year 1995,
30 the electric utility served between 150,000 and 250,000
31 retail customers in this State on January 1, 1995, and the
32 electric utility offers delivery services on or before June
33 1, 2000 to retail customers whose annual electric energy use
34 comprises 33% of the kilowatt hour sales to that group of

1 retail customers that are classified under Division D, Groups
2 20 through 39 of the Standard Industrial Classifications set
3 forth in the Standard Industrial Classification Manual
4 published by the United States Office of Management and
5 Budget, excluding the kilowatt hour sales to those customers
6 that are eligible for delivery services pursuant to Section
7 16-104(a)(1)(i), and offers delivery services to its
8 remaining retail customers classified under Division D,
9 Groups 20 through 39 on or before October 1, 2000, and,
10 provided further, that the electric utility commits not to
11 petition pursuant to Section 16-108(f) for entry of an order
12 by the Commission authorizing the electric utility to
13 implement transition charges for an additional period after
14 December 31, 2006, or (iv) 5.00 percentage points for each of
15 the 12-month periods ending September 30, 2000 through
16 September 30, 2004 for all other electric utilities or 7.00
17 percentage points for such utilities for each of the 12-month
18 periods ending September 30, 2000 through September 30, 2004
19 for any such utility that commits not to petition pursuant to
20 Section 16-108(f) for entry of an order by the Commission
21 authorizing the electric utility to implement transition
22 charges for an additional period after December 31, 2006.

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

30 (2) On or before March 31 of each year 2000 through
31 2005 each electric utility shall file a report with the
32 Commission showing its earned rate of return on common
33 equity, calculated in accordance with this subsection,
34 for the preceding calendar year and the average for the

1 preceding 2 calendar years.

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

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

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

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

25 (iv) The cents per kilowatt-hour refund factor
26 calculated in (iii) shall be credited to the
27 electric utility's customers by applying the factor
28 on the customer's monthly bills to each
29 kilowatt-hour sold or delivered until the total
30 amount calculated in (ii) has been paid to
31 customers.

32 (f) During the mandatory transition period, an electric
33 utility may file revised tariffs reducing the price of any
34 tariffed service offered by the electric utility for all

1 customers taking that tariffed service, which shall be
2 effective 7 days after filing.

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

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

12 (2) retire generating plants from service;

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

21 (4) use any accelerated cost recovery method
22 including accelerated depreciation, accelerated
23 amortization or other capital recovery methods, or record
24 reductions to the original cost of its assets.

25 In order to implement a reorganization, retire generating
26 plants from service, or sell, assign, lease or otherwise
27 transfer assets pursuant to this Section, the electric
28 utility shall comply with subsections (c) and (d) of Section
29 16-128, if applicable, and subsection (k) of this Section, if
30 applicable, and provide the Commission with at least 30 days
31 notice of the proposed reorganization or transaction, which
32 notice shall include the following information:

33 (i) a complete statement of the entries that
34 the electric utility will make on its books and

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

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

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

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

28 (v) if the electric utility proposes to sell,
29 assign, lease or otherwise transfer a generating
30 plant that brings the amount of net dependable
31 generating capacity transferred pursuant to this
32 subsection to an amount equal to or greater than 15%
33 of the electric utility's net dependable capacity as
34 of the effective date of this amendatory Act of

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

27 (vi) In addition, if the electric utility
28 proposes to sell, assign, or lease, (A) either (1)
29 an amount of generating plant that brings the amount
30 of net dependable generating capacity transferred
31 pursuant to this subsection to an amount equal to or
32 greater than 15% of its net dependable capacity on
33 the effective date of this amendatory Act of 1997,
34 or (2) one or more generating plants with a total

1 net dependable capacity of 1100 megawatts, or (B)
2 transmission and distribution facilities that either
3 (1) bring the amount of transmission and
4 distribution facilities transferred pursuant to this
5 subsection to an amount equal to or greater than 15%
6 of the electric utility's total depreciated original
7 cost investment in such facilities, or (2) represent
8 an investment of \$25,000,000 in terms of total
9 depreciated original cost, the electric utility
10 shall provide, in addition to the information listed
11 in subparagraphs (i) through (v), the following
12 information: (A) a description of how the electric
13 utility will meet its service obligations under this
14 Act in a safe and reliable manner and (B) the
15 electric utility's projected earned rate of return
16 on common equity, calculated in accordance with
17 subsection (d) of this Section, for each year from
18 the date of the notice through December 31, 2004
19 both with and without the proposed transaction. If
20 the Commission has not issued an order initiating a
21 hearing on the proposed transaction within 30 days
22 after the date the electric utility's notice is
23 filed, the transaction shall be deemed approved.
24 The Commission may, after notice and hearing,
25 prohibit the proposed transaction if it makes either
26 or both of the following findings: (1) that the
27 proposed transaction will render the electric
28 utility unable to provide its tariffed services in a
29 safe and reliable manner, or (2) that there is a
30 strong likelihood that consummation of the proposed
31 transaction will result in the electric utility
32 being entitled to request an increase in its base
33 rates during the mandatory transition period
34 pursuant to subsection (d) of this Section. Any

1 hearing initiated by the Commission into the
2 proposed transaction shall be completed, and the
3 Commission's final order approving or prohibiting
4 the proposed transaction shall be entered, within 90
5 days after the date the electric utility's notice
6 was filed. Provided, however, that a sale,
7 assignment, or lease of transmission facilities to
8 an independent system operator that meets the
9 requirements of Section 16-126 shall not be subject
10 to Commission approval under this Section.

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

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

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

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

34 (i) Subsequent to the mandatory transition period, the

1 Commission, in any proceeding to establish rates and charges
2 for tariffed services offered by an electric utility, shall
3 consider only (1) the then current or projected revenues,
4 costs, investments and cost of capital directly or indirectly
5 associated with the provision of such tariffed services; (2)
6 collection of transition charges in accordance with Sections
7 16-102 and 16-108 of this Act; (3) recovery of any employee
8 transition costs as described in Section 16-128 which the
9 electric utility is continuing to incur, including recovery
10 of any unamortized portion of such costs previously incurred
11 or committed, with such costs to be equitably allocated among
12 bundled services, delivery services, and contracts with
13 alternative retail electric suppliers; and (4) recovery of
14 the costs associated with the electric utility's compliance
15 with decommissioning funding requirements; and shall not
16 consider any other revenues, costs, investments or cost of
17 capital of either the electric utility or of any affiliate of
18 the electric utility that are not associated with the
19 provision of tariffed services. In setting rates for
20 tariffed services, the Commission shall equitably allocate
21 joint and common costs and investments between the electric
22 utility's competitive and tariffed services. In determining
23 the justness and reasonableness of the electric power and
24 energy component of an electric utility's rates for tariffed
25 services subsequent to the mandatory transition period and
26 prior to the time that the provision of such electric power
27 and energy is declared competitive, the Commission shall
28 consider the extent to which the electric utility's tariffed
29 rates for such component for each customer class exceed the
30 market value determined pursuant to Section 16-112, and, if
31 the electric power and energy component of such tariffed rate
32 exceeds the market value by more than 10% for any customer
33 class, may establish such electric power and energy component
34 at a rate equal to the market value plus 10%. In any such

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

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

30 (k) If an electric utility is selling or transferring to
31 a single buyer 5 or more generating plants located in this
32 State with a total net dependable capacity of 5000 megawatts
33 or more pursuant to subsection (g) of this Section and has
34 obtained a sale price or consideration that exceeds 200% of

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

19 (Source: P.A. 90-561, eff. 12-16-97; 90-563, eff. 12-16-97;
20 91-50, eff. 6-30-99.)".