

1 AN ACT concerning public utilities.

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
5 changing Sections 4-202, 4-203, 5-202, and 16-125 as follows:

6 (220 ILCS 5/4-202) (from Ch. 111 2/3, par. 4-202)

7 Sec. 4-202. Action for injunction.

8 (a) Except as provided in subsection (b) with respect to
9 telecommunications carriers as defined in Section 13-202,
10 whenever the Commission shall be of the opinion that any
11 public utility is failing or omitting or about to fail or
12 omit to do anything required of it by law, or by any order,
13 decision, rule, regulation, direction or requirement of the
14 Commission, issued or made under authority of this Act, or is
15 doing anything or about to do anything or permitting anything
16 or about to permit anything to be done, contrary to or in
17 violation of law or any order, decision, rule, regulation,
18 direction or requirement of the Commission, issued or made
19 under authority of this Act, the Commission shall file an
20 action or proceeding in the circuit court in and for the
21 county in which the case or some part thereof arose, or in
22 which the person or corporation complained of, if any, has
23 its principal place of business, or in which the person
24 complained of, if any, resides, in the name of the People of
25 the State of Illinois, for the purpose of having the
26 violation or threatened violation stopped and prevented,
27 either by mandamus or injunction. The Commission may express
28 its opinion in a resolution based upon whatever facts and
29 evidence that has come to its attention and may issue the
30 resolution ex parte and without holding any administrative

1 hearing before bringing suit. Except in cases involving an
2 imminent threat to the public health or public safety, no
3 such resolution shall be adopted until 48 hours after the
4 public utility has been given notice of (i) the substance of
5 the alleged violation, including a citation to the law,
6 order, decision, rule regulation, or direction of the
7 Commission alleged to have been violated and (ii) the time
8 and date of the meeting at which such resolution will first
9 be before the Commission for consideration. The Commission
10 shall file the action or proceeding by complaint in the
11 circuit court alleging the violation or threatened violation
12 complained of and praying for appropriate relief by way of
13 mandamus or injunction. It shall thereupon be the duty of
14 the court to specify a time, not exceeding 20 days after the
15 service of the copy of the complaint, within which the public
16 utility complained of must answer the complaint, and in the
17 meantime said public utility may be restrained. In case of
18 default in answer, or after answer, the court shall
19 immediately inquire into the facts and circumstances of the
20 case. Such corporation or persons as the court may deem
21 necessary or proper to be joined as parties, in order to make
22 its judgment order effective, may be joined as parties. The
23 final judgment in any action or proceeding shall either
24 dismiss the action or proceeding or grant relief by mandamus
25 or injunction or be made permanent as prayed for in the
26 complaint, or in such modified or other form as will afford
27 appropriate relief. An appeal may be taken from such final
28 judgment as in other civil cases.

29 (b) This subsection shall apply to telecommunications
30 carriers as defined in Section 13-202. Whenever the
31 Commission shall be of the opinion that any public utility is
32 failing or omitting or about to fail or omit, to do anything
33 required of it by law, or by any order, decision, rule,
34 regulation, direction or requirement of the Commission,

1 issued or made under authority of this Act, or is doing
2 anything or about to do anything or permitting anything or
3 about to permit anything to be done, contrary to or in
4 violation of law or any order, decision, rule, regulation,
5 direction or requirement of the Commission, issued or made
6 under authority of this Act, the Commission shall file an
7 action or proceeding in the circuit court in and for the
8 county in which the case or some part thereof arose, or in
9 which the person or corporation complained of, if any, has
10 its principal place of business, or in which the person
11 complained of, if any, resides, in the name of the People of
12 the State of Illinois, for the purpose of having the
13 violation or threatened violation stopped and prevented,
14 either by mandamus or injunction. The Commission shall file
15 the action or proceeding by complaint in the circuit court,
16 alleging the violation or threatened violation complained of,
17 and praying for appropriate relief by way of mandamus or
18 injunction. It shall thereupon be the duty of the court to
19 specify a time, not exceeding 20 days after the service of
20 the copy of the complaint, within which the public utility
21 complained of must answer the complaint, and in the meantime
22 said public utility may be restrained. In case of default in
23 answer, or after answer, the court shall immediately inquire
24 into the facts and circumstances of the case. Such
25 corporation or persons as the court may deem necessary or
26 proper to be joined as parties, in order to make its
27 judgment, order effective, may be joined as parties. The
28 final judgment in any action or proceeding shall either
29 dismiss the action or proceeding or grant relief by mandamus
30 or injunction or be made permanent as prayed for in the
31 complaint, or in such modified or other form as will afford
32 appropriate relief. An appeal may be taken from such final
33 judgment as in other civil cases.

34 (Source: P.A. 84-617.)

1 (220 ILCS 5/4-203) (from Ch. 111 2/3, par. 4-203)

2 Sec. 4-203. Action to recover penalties.

3 (a) Except as provided in subsection (b) with respect to
4 telecommunications carriers as defined in Section 13-202:

5 (1) All civil penalties established under this Act
6 shall be assessed and collected by the Commission. Except
7 for the penalties provided under Section 2-202, civil
8 penalties may be assessed only after notice and
9 opportunity to be heard. Any such civil penalty may be
10 compromised by the Commission. In determining the amount
11 of the penalty, or the amount agreed to in compromise,
12 the Commission shall consider the appropriateness of the
13 penalty to the size of the business of the public
14 utility, corporation other than a public utility, or
15 person acting as a public utility charged, the gravity of
16 the violation, and the good faith of the public utility,
17 corporation other than a public utility, or person acting
18 as a public utility charged in attempting to achieve
19 compliance after notification of a violation. Nothing in
20 this Section, however, increases or decreases any minimum
21 or maximum penalty prescribed elsewhere in this Act.

22 (2) If timely judicial review of a Commission order
23 that imposes a civil penalty is taken by the public
24 utility, corporation other than a public utility, or
25 person acting as a public utility on which the civil
26 penalty has been imposed, the reviewing court shall enter
27 a judgment on all amounts upon affirmance of the
28 Commission order. If timely judicial review is not taken
29 and the civil penalty remains unpaid for 60 days after
30 service of the order, the Commission in its discretion
31 may either begin revocation proceedings or bring suit to
32 recover the penalties. Unless stayed by a reviewing
33 court, interest shall accrue from 60 days after the date
34 of service of the Commission order.

1 (3) Actions to recover delinquent civil penalties
2 under this Act shall be brought in the name of the People
3 of the State of Illinois in the circuit court in and for
4 the county in which the cause, or some part thereof,
5 arose, or in which the corporation complained of, if any,
6 has its principal place of business, or in which the
7 person, if any, complained of, resides. The action shall
8 be commenced and prosecuted to final judgment by the
9 Commission. In any such action, all interest incurred up
10 to the time of final court judgment may be sued for and
11 recovered in that action. In all such actions, the
12 procedure and rules of evidence shall be the same as in
13 ordinary civil actions, except as otherwise herein
14 provided. All fines and penalties recovered by the State
15 in any such action shall be paid into the State treasury
16 to the credit of the General Revenue Fund. Any such
17 action may be compromised or discontinued on application
18 of the Commission upon such terms as the court shall
19 approve and order.

20 (4) Civil penalties related to the late filing of
21 reports, taxes, or other filings shall be paid into the
22 State Treasury to the credit of the Public Utility Fund.
23 Except as otherwise provided in this Act, all other fines
24 and civil penalties shall be paid into the State Treasury
25 to the credit of the General Revenue Fund.

26 (b) This subsection shall apply to telecommunications
27 carriers as defined in Section 13-202. Except as otherwise
28 provided in this Act, actions to recover penalties under this
29 Act shall be brought in the name of the People of the State
30 of Illinois in the circuit court in and for the county in
31 which the cause, or some part thereof, arose, or in which the
32 corporation complained of, if any, has its principal place of
33 business, or in which the person, if any, complained of,
34 resides. The action shall be commenced and prosecuted to

1 final judgment by the Commission. In any such action, all
2 penalties incurred up to the time of commencing the same may
3 be sued for and recovered. In all such actions, the procedure
4 and rules of evidence shall be the same as in ordinary civil
5 actions, except as otherwise herein provided. All fines and
6 penalties recovered by the State in any such action shall be
7 paid into the State treasury to the credit of the general
8 fund. Any such action may be compromised or discontinued on
9 application of the Commission upon such terms as the court
10 shall approve and order.

11 (Source: P.A. 84-617.)

12 (220 ILCS 5/5-202) (from Ch. 111 2/3, par. 5-202)

13 Sec. 5-202. Violations; penalty.

14 (a) Except as provided in subsection (b) with respect to
15 telecommunications carriers as defined in Section 13-202, any
16 public utility, any corporation other than a public utility,
17 or any person acting as a public utility that violates or
18 fails to comply with any provisions of this Act, or that
19 fails to obey, observe, or comply with any order, decision,
20 rule, regulation, direction, or requirement, or any part or
21 provision thereof, of the Commission, made or issued under
22 authority of this Act, in a case in which a penalty is not
23 otherwise provided for in this Act, shall be subject to a
24 civil penalty imposed in the manner provided in Section
25 4-203. A small public utility, as defined in subsection (b)
26 of Section 4-502 of this Act, is subject to a civil penalty
27 of not less than \$500 nor more than \$2,000 for each and every
28 offense. All other public utilities, corporations other than
29 a public utility, and persons acting as a public utility are
30 subject to a civil penalty of up to \$30,000 for each and
31 every offense.

32 Every violation of the provisions of this Act or of any
33 order, decision, rule, regulation, direction, or requirement

1 of the Commission, or any part or portion thereof by any
2 corporation or person, is a separate and distinct offense,
3 and in case of a continuing violation each day's continuance
4 thereof shall be a separate and distinct offense, provided,
5 however, the cumulative penalty for any continuing violation
6 shall not exceed \$500,000.

7 In construing and enforcing the provisions of this Act
8 relating to penalties, the act, omission, or failure of any
9 officer, agent, or employee of any public utility,
10 corporation other than a public utility, or person acting as
11 a public utility that is acting within the scope of his
12 official duties or employment shall in every case be deemed
13 to be the act, omission, or failure of such public utility,
14 corporation other than a public utility, or person acting as
15 a public utility.

16 If the party who has violated or failed to comply with
17 this Act or an order, decision, rule, regulation, direction,
18 or requirement of the Commission or any part or provision
19 thereof fails to seek review pursuant to Sections 10-113 and
20 10-201 of this Act within 30 days after service of the order,
21 the party shall, upon expiration of the 30 days, be subject
22 to the civil penalty provision of this Section.

23 (b) This subsection shall apply to telecommunications
24 carriers as defined in Section 13-202. Any public utility or
25 any corporation other than a public utility, which violates
26 or fails to comply with any provisions of this Act, or which
27 fails to obey, observe or comply with any order, decision,
28 rule, regulation, direction, or requirement or any part or
29 provision thereof, of the Commission, made or issued under
30 authority of this Act, in a case in which a penalty is not
31 otherwise provided for in this Act, shall be subject to a
32 civil penalty imposed in the manner provided in Section 4-203
33 of not less than \$500 nor more than \$2,000 for each and every
34 offense.

1 Every violation of the provisions of this Act or of any
2 order, decision, rule, regulation, direction, or requirement
3 of the Commission, or any part or portion thereof by any
4 corporation or person, is a separate and distinct offense,
5 and in case of a continuing violation each day's continuance
6 thereof shall be a separate and distinct offense.

7 In construing and enforcing the provisions of this Act
8 relating to penalties, the act, omission, or failure of any
9 officer, agent, or employee of any public utility acting
10 within the scope of his official duties or employment, shall
11 in every case be deemed to be the act, omission, or failure
12 of such public utility.

13 If the party who has violated or failed to comply with
14 this Act or an order, decision, rule, regulation, direction,
15 or requirement of the Commission or any part or provision
16 thereof, fails to seek review pursuant to Sections 10-113 and
17 10-201 of this Act within 30 days after of service of the
18 order, the party shall, upon expiration of the 30 days, be
19 subject to the civil penalty provision of this Section.

20 No penalties shall accrue under this provision until 15
21 days after the mailing of a notice to such party or parties
22 that they are in violation of or have failed to comply with
23 the Act or order, decision, rule, regulation, direction, or
24 requirement of the Commission or any part or provision
25 thereof.

26 (Source: P.A. 87-164.)

27 (220 ILCS 5/16-125)

28 Sec. 16-125. Transmission and distribution reliability
29 requirements.

30 (a) To assure the reliable delivery of electricity to
31 all customers in this State and the effective implementation
32 of the provisions of this Article, the Commission shall,
33 within 180 days of the effective date of this Article, adopt

1 rules and regulations for assessing and assuring the
2 reliability of the transmission and distribution systems and
3 facilities that are under the Commission's jurisdiction.

4 (b) These rules and regulations shall require each
5 electric utility or alternative retail electric supplier
6 owning, controlling, or operating transmission and
7 distribution facilities and equipment subject to the
8 Commission's jurisdiction, referred to in this Section as
9 "jurisdictional entities", to adopt and implement procedures
10 for restoring transmission and distribution services to
11 customers after transmission or distribution outages on a
12 nondiscriminatory basis without regard to whether a customer
13 has chosen the electric utility, an affiliate of the electric
14 utility, or another entity as its provider of electric power
15 and energy. These rules and regulations shall also, at a
16 minimum, specifically require each jurisdictional entity to
17 submit annually to the Commission.

18 (1) the number and duration of planned and
19 unplanned outages during the prior year and their impacts
20 on customers;

21 (2) outages that were controllable and outages that
22 were exacerbated in scope or duration by the condition of
23 facilities, equipment or premises or by the actions or
24 inactions of operating personnel or agents;

25 (3) customer service interruptions that were due
26 solely to the actions or inactions of an alternative
27 retail electric supplier or a public utility in supplying
28 power or energy;

29 (4) a detailed report of the age, current
30 condition, reliability and performance of the
31 jurisdictional entity's existing transmission and
32 distribution facilities, which shall include, without
33 limitation, the following data:

34 (i) a summary of the jurisdictional entity's

1 outages and voltage variances reportable under the
2 Commission's rules;

3 (ii) the jurisdictional entity's expenditures
4 for transmission construction and maintenance, the
5 ratio of those expenditures to the jurisdictional
6 entity's transmission investment, and the average
7 remaining depreciation lives of the entity's
8 transmission facilities, expressed as a percentage
9 of total depreciation lives;

10 (iii) the jurisdictional entity's expenditures
11 for distribution construction and maintenance, the
12 ratio of those expenditures to the jurisdictional
13 entity's distribution investment, and the average
14 remaining depreciation lives of the entity's
15 distribution facilities, expressed as a percentage
16 of total depreciation lives;

17 (iv) a customer satisfaction survey covering,
18 among other areas identified in Commission rules,
19 reliability, customer service, and understandability
20 of the jurisdictional entity's services and prices;
21 and

22 (v) the corresponding information, in the same
23 format, for the previous 3 years, if available;

24 (5) a plan for future investment and reliability
25 improvements for the jurisdictional entity's transmission
26 and distribution facilities that will ensure continued
27 reliable delivery of energy to customers and provide the
28 delivery reliability needed for fair and open
29 competition; and

30 (6) a report of the jurisdictional entity's
31 implementation of its plan filed pursuant to subparagraph
32 (5) for the previous reporting period.

33 (c) The Commission rules shall set forth the criteria
34 that will be used to assess each jurisdictional entity's

1 annual report and evaluate its reliability performance. Such
2 criteria must take into account, at a minimum: the items
3 required to be reported in subsection (b); the relevant
4 characteristics of the area served; the age and condition of
5 the system's equipment and facilities; good engineering
6 practices; the costs of potential actions; and the benefits
7 of avoiding the risks of service disruption.

8 (d) At least every 3 years, beginning in the year the
9 Commission issues the rules required by subsection (a) or the
10 following year if the rules are issued after June 1, the
11 Commission shall assess the annual report of each
12 jurisdictional entity and evaluate its reliability
13 performance. The Commission's evaluation shall include
14 specific identification of, and recommendations concerning,
15 any potential reliability problems that it has identified as
16 a result of its evaluation.

17 (e) In the event that more than 30,000 customers of an
18 electric utility are subjected to a continuous power
19 interruption of 4 hours or more that results in the
20 transmission of power at less than 50% of the standard
21 voltage, or that results in the total loss of power
22 transmission, the utility shall be responsible for
23 compensating customers affected by that interruption for 4
24 hours or more for all actual damages, which shall not
25 include consequential damages, suffered as a result of the
26 power interruption. The utility shall also reimburse the
27 affected municipality, county, or other unit of local
28 government in which the power interruption has taken place
29 for all emergency and contingency expenses incurred by the
30 unit of local government as a result of the interruption. A
31 waiver of the requirements of this subsection may be granted
32 by the Commission in instances in which the utility can show
33 that the power interruption was a result of any one or more
34 of the following causes:

1 (1) Unpreventable damage due to weather events or
2 conditions.

3 (2) Customer tampering.

4 (3) Unpreventable damage due to civil or
5 international unrest or animals.

6 (4) Damage to utility equipment or other actions by
7 a party other than the utility, its employees, agents,
8 or contractors.

9 Loss of revenue and expenses incurred in complying with this
10 subsection may not be recovered from ratepayers.

11 (f) In the event of a power surge or other fluctuation
12 that causes damage and affects more than 30,000 customers,
13 the electric utility shall pay to affected customers the
14 replacement value of all goods damaged as a result of the
15 power surge or other fluctuation unless the utility can show
16 that the power surge or other fluctuation was due to one or
17 more of the following causes:

18 (1) Unpreventable damage due to weather events or
19 conditions.

20 (2) Customer tampering.

21 (3) Unpreventable damage due to civil or
22 international unrest or animals.

23 (4) Damage to utility equipment or other actions by
24 a party other than the utility, its employees, agents,
25 or contractors.

26 Loss of revenue and expenses incurred in complying with this
27 subsection may not be recovered from ratepayers. Customers
28 with respect to whom a waiver has been granted by the
29 Commission pursuant to subparagraphs (1)-(4) of subsections
30 (e) and (f) shall not count toward the 30,000 customers
31 required therein.

32 (g) Whenever an electric utility must perform planned
33 or routine maintenance or repairs on its equipment that will
34 result in transmission of power at less than 50% of the

1 standard voltage, loss of power, or power fluctuation (as
2 defined in subsection (f)), the utility shall make
3 reasonable efforts to notify potentially affected customers
4 no less than 24 hours in advance of performance of the
5 repairs or maintenance.

6 (h) Remedies provided for under this Section may be
7 sought exclusively through the Illinois Commerce Commission
8 as provided under Section 10-109 of this Act. Damages
9 awarded under this Section for a power interruption shall be
10 limited to actual damages, which shall not include
11 consequential damages, and litigation costs. Damage awards
12 and other amounts assessed against an electric utility under
13 this Section may not be paid out of utility rate funds,
14 except that if the electric utility prevails in whole or in
15 part in showing that the power interruption or power surge or
16 other fluctuation was due to one or more of the causes set
17 forth in subsections (e)(1) through (e)(4) or (f)(1) through
18 (f)(4), the electric utility may request and the Commission
19 may determine that some or all of the consultant expenses
20 assessed against it under this subsection are recoverable to
21 the extent permitted by this Act. If the Commission receives
22 a formal request for a waiver under subsection (e) or (f),
23 either in a filing by the electric utility which initiates a
24 formal proceeding or in a filing made by the utility in a
25 formal complaint brought by one or more customers under
26 subsection (e) or (f), the Commission is authorized to retain
27 consultants with technical expertise who are independent of
28 the utility and of interested parties to assist the
29 Commission or its staff in resolving such request. The
30 Commission shall assess the electric utility for the
31 reasonable fees and expenses of such consultants. Any
32 technical consultants used by the Commission as part of a
33 hearing on a waiver request shall be subject to
34 cross-examination and the rules of the Commission governing

1 ex parte communication. The affected public utility must be
2 provided with a copy of any written report submitted or
3 produced by a technical consultant retained by the
4 Commission, and the affected public utility must be given an
5 opportunity to comment on and respond to any analyses,
6 conclusions or reports issued by any technical consultant.

7 (i) The provisions of this Section shall not in any way
8 diminish or replace other civil or administrative remedies
9 available to a customer or a class of customers.

10 (j) The Commission shall by rule require an electric
11 utility to maintain service records detailing information on
12 each instance of transmission of power at less than 50% of
13 the standard voltage, loss of power, or power fluctuation
14 (as defined in subsection (f)), that affects 10 or more
15 customers. Occurrences that are momentary shall not be
16 required to be recorded or reported. The service record
17 shall include, for each occurrence, the following
18 information:

- 19 (1) The date.
- 20 (2) The time of occurrence.
- 21 (3) The duration of the incident.
- 22 (4) The number of customers affected.
- 23 (5) A description of the cause.
- 24 (6) The geographic area affected.
- 25 (7) The specific equipment involved in the
26 fluctuation or interruption.
- 27 (8) A description of measures taken to restore
28 service.
- 29 (9) A description of measures taken to remedy the
30 cause of the power interruption or fluctuation.
- 31 (10) A description of measures taken to prevent
32 future occurrence.
- 33 (11) The amount of remuneration, if any, paid to
34 affected customers.

1 (12) A statement of whether the fixed charge was
2 waived for affected customers.

3 Copies of the records containing this information shall
4 be available for public inspection at the utility's offices,
5 and copies thereof may be obtained upon payment of a fee not
6 exceeding the reasonable cost of reproduction. A copy of
7 each record shall be filed with the Commission and shall be
8 available for public inspection. Copies of the records may
9 be obtained upon payment of a fee not exceeding the
10 reasonable cost of reproduction.

11 (k) The requirements of subsections (e) through (j) of
12 this Section shall apply only to an electric public utility
13 having 1,000,000 or more customers.

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

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.